

Exhibit B

5/14/2021

Juniper Networks, Inc., et al., v. Swarm Technology LLC Alfonso Íñiguez
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<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION</p> <p>-----X JUNIPER NETWORKS, INC., and : APSTRA, INC., : : Plaintiffs, : : Case No. vs. : : 3:20-cv-03137-JD SWARM TECHNOLOGY LLC, : : Defendant. : -----X</p> <p>** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ** ** PURSUANT TO PROTECTIVE ORDER **</p> <p>VIRTUAL VIDEOTAPED 30(b)(6) DEPOSITION OF SWARM TECHNOLOGY CORPORATE REPRESENTATIVE AND IN HIS INDIVIDUAL CAPACITY ALFONSO ÍÑIGUEZ Friday, May 14, 2021 9:04 a.m. Pacific Daylight Time</p> <p>REPORTER: Dawn A. Jaques, CSR, CLR</p> <p>DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646</p>	<p>I-N-D-E-X</p> <p>WITNESS: PAGE: ALFONSO INIGUEZ Examination by Mr. Sigler 10 Examination by Mr. Kelly 214</p> <p>E-X-H-I-B-I-T-S</p> <p>INIGUEZ DEPOSITION EXHIBIT: PAGE: Exhibit 1 July 16, 2018, letter to Alexis B. Bjorlin of Intel from Michael Kelly SW-JU-JV-0000132 - 0000133 11 Exhibit 2 July 16, 2018, letter to Tim Teter of NVIDIA from Michael Kelly SW-JU-JV-0000110 - 0000111 22 Exhibit 3 July 16, 2018, letter to Thomas Wyatt of AppsDynamic from Michael Kelly SW-JU-JV-0000130 - 0000131 27 Exhibit 4 July 16, 2018, letter to Brian Modoff of Qualcomm from Michael Kelly SW-JU-JV-0000126 - 0000127 27 Exhibit 5 July 16, 2018, letter to Vincent Pangrazio of Cavium from Michael Kelly SW-JU-JV-0000118 - 0000119 28 Exhibit 6 July 16, 2018, letter to Lawrence Ellison of Oracle from Michael Kelly SW-JU-JV-0000114 - 0000115 29</p>
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<p>1 APPEARANCES: 2 3 On behalf of the Plaintiffs: R. WILLIAM SIGLER, ESQ. 4 Fisch Sigler LLP 5 5301 Wisconsin Avenue, NW 6 Fourth Floor 7 Washington, D.C. 20015 8 PHONE: (202) 362-3520 9 EMAIL: bill.sigler@fischllp.com 10 11 On behalf of the Defendant: MICHAEL K. KELLY, ESQ. 12 CHRISTINE JONES, ESQ. 13 TIMOTHY CASEY, ESQ. 14 Beus Gilbert McGroder 15 701 N. 44th Street 16 Phoenix, Arizona 85008 17 PHONE: (480) 429-3015 18 EMAIL: mkelly@beusgilbert.com 19 cjones@beusgilbert.com 20 21 VIDEOGRAPHER AND EXHIBIT TECHNICIAN: 22 Billy Fahnert, Digital Evidence Group</p>	<p>INDEX (Continued) E-X-H-I-B-I-T-S</p> <p>INIGUEZ DEPOSITION EXHIBIT: PAGE: Exhibit 7 July 16, 2018, letter to Brian Stevens of Google from Michael Kelly SW-JU-JV-0000112 - 0000113 31 Exhibit 8 July 16, 2018, letter to Katherine Adams of Google from Michael Kelly SW-JU-JV-0000116 - 0000117 31 Exhibit 9 September 27, 2018, letter to Michael Kelly from Denise Kerstein of Apple Re: Your Correspondence to Apple SW-JU-JV-0000134 35 Exhibit 10 December 5, 2014, letter to Michael Kelly from Jeff Lasker of Apple SW-JU-JV-0000001 41 Exhibit 11 Letter template from Michael Kelly SW-JU-JV-0001349 47 Exhibit 12 Letter template from Michael Kelly SW-JU-JV-0001393 51 Exhibit 13 May 12, 2021, letter to Fisch Sigler LLP from Elvis Sulejmani, Paralegal of Beus Gilbert McGroder (No Bates stamp) (3 pages) 59 Exhibit 14 Notice of 30(b)(6) deposition of Swarm Technology LLC (No Bates number) (8 pages) 71 Exhibit 15 July 16, 2018, letter to Bikash Koley of Juniper Networks from Michael Kelly SW-JU-JV-0000124 - 0000125 87</p>

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<p style="text-align: right;">Page 9</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are on the</p> <p>3 record. This is the 30(b)(6) deposition of</p> <p>4 Swarm Technology LLC, represented by Alfonso</p> <p>5 Íñiguez, in the matter of Juniper Networks, Inc.,</p> <p>6 et al., vs. Swarm Technology LLC, in the</p> <p>7 United States District Court, Northern District of</p> <p>8 California, San Francisco Division.</p> <p>9 Name is Billy Fahnert; I am the video</p> <p>10 technician today. The court reporter is</p> <p>11 Dawn Jaques. We are here on behalf of Digital</p> <p>12 Evidence Group. Today's date is May 14th, 2021.</p> <p>13 The time is 9:04 a.m. Pacific Daylight Time.</p> <p>14 All parties have stipulated to the</p> <p>15 witness being sworn in remotely.</p> <p>16 Counsel, please identify yourselves</p> <p>17 for the record, and then the witness will be sworn</p> <p>18 in.</p> <p>19 MR. KELLY: Michael Kelly --</p> <p>20 MR. SIGLER: Good morning.</p> <p>21 MR. KELLY: Michael -- go ahead.</p> <p>22 MR. SIGLER: I'm Bill Sigler of</p>	<p style="text-align: right;">Page 11</p> <p>1 sir. I'm Bill Sigler, one of the attorneys</p> <p>2 representing Juniper and Apstra in the case.</p> <p>3 Thank you for joining us today.</p> <p>4 I want to start by asking you about a</p> <p>5 document that your lawyers produced to us.</p> <p>6 Mr. Fahnert, can you please put Tab A</p> <p>7 on the screen, and we'll mark that as Exhibit 1,</p> <p>8 please.</p> <p>9 (Iniguez Exhibit 1 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Mr. Íñiguez, can you see the document</p> <p>13 that we placed on the screen as Exhibit 1?</p> <p>14 A Yes, I can see.</p> <p>15 Q Okay. Do you see, sir, at the top of</p> <p>16 this document it's dated July 16th, 2018?</p> <p>17 A Can you repeat that? Because there</p> <p>18 was some noise in here that I couldn't hear your</p> <p>19 question.</p> <p>20 Q Sure. Do you see, sir, that this</p> <p>21 document is dated July 16th, 2018?</p> <p>22 A Yes. Yes, I can see that.</p>
<p style="text-align: right;">Page 10</p> <p>1 Fisch Sigler LLP in Washington, D.C., and I'm here</p> <p>2 today representing Juniper Networks and Apstra.</p> <p>3 MR. KELLY: I'm Michael Kelly of the</p> <p>4 law firm of Beus Gilbert McGroder in Phoenix,</p> <p>5 Arizona, representing the witness in both his</p> <p>6 individual capacity as Alfonso Íñiguez, the</p> <p>7 inventor of the patents, and in his representative</p> <p>8 capacity as a 30(b)(6) designee for the Defendant</p> <p>9 Swarm.</p> <p>10 THE REPORTER: Okay, sir, would you</p> <p>11 raise your right hand to be sworn, please?</p> <p>12 (The witness was administered the oath.)</p> <p>13 Whereupon,</p> <p>14 ALFONSO ÍÑIGUEZ,</p> <p>15 was called as a witness, after having been</p> <p>16 first duly sworn by the Notary Public,</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>19 BY MR. SIGLER:</p> <p>20 Q Good morning, Mr. Íñiguez.</p> <p>21 A Good morning.</p> <p>22 Q We haven't met -- we haven't before,</p>	<p style="text-align: right;">Page 12</p> <p>1 Q All right. And do you see, sir, right</p> <p>2 below that that it says that it's being sent via</p> <p>3 United States mail?</p> <p>4 A Yes.</p> <p>5 Q And it's addressed to Alexis B.</p> <p>6 Bjorlin. Is that correct, sir?</p> <p>7 A Yes, that's correct.</p> <p>8 Q And that individual is identified as a</p> <p>9 Corporate Vice President General Manager at Intel,</p> <p>10 right, sir?</p> <p>11 A Yes, that's correct.</p> <p>12 MR. KELLY: Mr. Sigler, I'm sorry, do</p> <p>13 you have a Bates number for this document?</p> <p>14 MR. SIGLER: The Bates number appears</p> <p>15 above the document on the screen.</p> <p>16 MR. KELLY: Oh, I see it up there.</p> <p>17 I'm sorry. I was looking for it. Okay,</p> <p>18 thank you.</p> <p>19 MR. SIGLER: No worries.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q All right, Mr. Íñiguez, refocusing</p> <p>22 back on Exhibit 1, do you see at the top there</p>

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<p>1 that there's some letterhead, and Michael K. 2 Kelly's name is there? 3 A Yes, I see. Are you asking me if I 4 see Michael Kelly on the letterhead? 5 Q Yes. Is that Michael K. Kelly 6 identified there? 7 A Yes. 8 Q Who is Mr. Kelly? 9 A He's my attorney. At the time when I 10 send the letter, he was my patent attorney. 11 Q Okay. So he was serving as a lawyer 12 for Swarm at the time of this letter? 13 A Well, he was my -- I assume, yes. He 14 was my patent attorney, so he was, yes, 15 representing Swarm. 16 Q And Mr. Kelly is representing Swarm in 17 this case, right, sir? 18 A I'm having a problem hearing. I use 19 hearing aids, but can you raise the volume? 20 MS. JONES: I can try. 21 (Pause in the proceedings.) 22 THE WITNESS: Okay, ready? All right.</p>	<p>1 Swarm in about 2014? 2 A 2014? I would say yes. 3 Q Okay, thank you, sir. 4 A Yeah. 5 Q And have you seen this letter before, 6 sir? 7 A Yes, I have. 8 Q Did you look at this letter in 9 preparing for the deposition today? 10 A I did. 11 Q Let's focus now on the first paragraph 12 of the body of this letter to Mr. Bjorlin at 13 Intel, please. 14 Can you see that there, Mr. Íñiguez? 15 A Yes, I can see it. 16 Q All right. And the letter opens by 17 saying "The purpose of this letter is to highlight 18 a licensing opportunity," right, sir? 19 A Yes. 20 Q All right. And going to the next 21 sentence, it says, "In short, Swarm's research and 22 development efforts in IoT devices, edge</p>
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<p>1 BY MR. SIGLER: 2 Q Are you ready, sir? 3 A Yes, I'm ready. 4 Q Okay, thank you. 5 And so Mr. Kelly is representing Swarm 6 in this case, right? 7 A Correct. 8 Q And how long have you known Mr. Kelly? 9 A I have known Mr. Kelly for 10 approximately seven years. 11 Q When did -- when did -- strike that. 12 When did Swarm first retain Mr. Kelly 13 to act as an attorney on its behalf? 14 A I don't have the exact date, but at 15 one point, around seven years ago, I contacted 16 Mr. Kelly, and he did patent and prosecution for 17 Swarm. 18 At that time, he was working for 19 another firm, Ingressia Fisher Lorenz is the name 20 of this Swarm [sic] -- of the company -- of the 21 firm. 22 Q So he first started doing work for</p>	<p>1 computing, intent-based autonomy, plug-and-play 2 robotics, and swarm processing systems (featured 3 at www.swarmtechnology.us) have yielded a 4 significant and growing global patent portfolio." 5 Do you see that, sir? 6 A Yes, I see it. 7 Q And then the letter goes on to state 8 that Swarm is currently seeking to license that 9 global patent portfolio, right, sir? 10 A Yes. 11 Q Okay. Mr. Fahnert, if you could back 12 out of that view and go to the remaining 13 paragraphs on the screen, please? 14 Sir, can you see that on your screen? 15 A Yes, I can see it. 16 Q All right. So would you agree with 17 me, sir, that this letter references Swarm's 18 '004 patent? 19 A Yes, it does. 20 Q And the letter also references Swarm's 21 '777 patent? 22 A Yes.</p>

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<p style="text-align: right;">Page 17</p> <p>1 Q All right. And below that, in point</p> <p>2 three, it references a pending patent application</p> <p>3 that ends in 480, right?</p> <p>4 A That's correct.</p> <p>5 Q And that 480 application became the</p> <p>6 '275 patent at issue, right, sir?</p> <p>7 A That is correct.</p> <p>8 Q And do you understand, sir, that the</p> <p>9 three patents at issue in this case are the '004,</p> <p>10 '777, and '275 patents?</p> <p>11 A Yes.</p> <p>12 Q All right. Mr. Fahnert, can you</p> <p>13 please take us to page 2 of this document?</p> <p>14 At the bottom there, Mr. Íñiguez, do</p> <p>15 you see that you're copied on this letter?</p> <p>16 A Yes.</p> <p>17 Q And did you receive a copy of this</p> <p>18 letter in July 2018 when it was sent?</p> <p>19 A Yes, I have a -- I received a copy of</p> <p>20 the letter.</p> <p>21 Q All right. And the last paragraph in</p> <p>22 the body of the letter says, "We would welcome the</p>	<p style="text-align: right;">Page 19</p> <p>1 that letter that you are showing me on the screen.</p> <p>2 If that is the question, then the answer is yes.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q And that letter stated that Swarm</p> <p>5 would welcome the opportunity to discuss exclusive</p> <p>6 or non-exclusive patent licensing arrangements</p> <p>7 with Intel, right, sir?</p> <p>8 A Yes.</p> <p>9 Q All right. Did Intel ever respond to</p> <p>10 this letter?</p> <p>11 A I -- we did not get a response from</p> <p>12 that letter.</p> <p>13 Q Did Mr. Kelly or any other</p> <p>14 representatives of Swarm ever speak to Intel on</p> <p>15 the phone about licensing Swarm's patents?</p> <p>16 MR. KELLY: Objection to the extent</p> <p>17 answering that question would invade the</p> <p>18 privilege.</p> <p>19 THE WITNESS: As far as I can</p> <p>20 remember, we -- we never -- this -- we didn't get</p> <p>21 a response on this letter.</p> <p>22 So if you're asking if we contacted</p>
<p style="text-align: right;">Page 18</p> <p>1 opportunity to discuss exclusive or non-exclusive</p> <p>2 patent licensing arrangements with you."</p> <p>3 Do you see that, sir?</p> <p>4 A Yes.</p> <p>5 Q So in July 2018, Swarm offered Intel</p> <p>6 the opportunity to license Swarm's patents, right,</p> <p>7 sir?</p> <p>8 MR. KELLY: Objection to the</p> <p>9 foundation and to form.</p> <p>10 MR. SIGLER: Mr. Kelly, Judge Donato's</p> <p>11 discovery order very strictly restricts speaking</p> <p>12 objections. You should limit your objections to</p> <p>13 form or scope, or if you have a privilege</p> <p>14 instruction, please. It's in paragraph 13 of his</p> <p>15 Order.</p> <p>16 BY MR. SIGLER:</p> <p>17 Q Mr. Íñiguez, I'm going to ask this</p> <p>18 again. So in July 2018, Swarm offered Intel the</p> <p>19 opportunity to license Swarm's patents, right,</p> <p>20 sir?</p> <p>21 MR. KELLY: Objection as to form.</p> <p>22 THE WITNESS: On that date, we send</p>	<p style="text-align: right;">Page 20</p> <p>1 them by phone or other means, no, that was -- that</p> <p>2 was this letter.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q So Swarm didn't have any further</p> <p>5 communications beyond this letter with Intel about</p> <p>6 licensing Swarm's patents?</p> <p>7 A We didn't get any communication.</p> <p>8 I don't know if we -- we provided a</p> <p>9 list of companies to whom we sent letters. I</p> <p>10 don't know if -- I cannot recall if we have sent a</p> <p>11 previous letter to Intel.</p> <p>12 Q And what list of companies are you</p> <p>13 referring to?</p> <p>14 A The companies that --</p> <p>15 Q Strike that. Strike that. I'm sorry,</p> <p>16 that was a bad question.</p> <p>17 You said that Swarm provided a list of</p> <p>18 companies to which it sent letters about licensing</p> <p>19 Swarm's patents, right?</p> <p>20 A Well, when we produced the documents,</p> <p>21 we provided all the letters that we sent, and all</p> <p>22 that information is in your hands at this point.</p>

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<p style="text-align: right;">Page 21</p> <p>1 Q You referenced a list of companies</p> <p>2 that Swarm sent letters to, right, sir?</p> <p>3 A When I say "list," I said they're</p> <p>4 included in the -- in those -- in those files that</p> <p>5 we produced. That's what I mean by "list."</p> <p>6 Q So the files that -- if I see a letter</p> <p>7 like this, like the one we're looking at to Intel</p> <p>8 on July 16, 2018, if I see that in these documents</p> <p>9 that Swarm produced to me, that means it was sent?</p> <p>10 A Wait, let me see. I want to make sure</p> <p>11 that I understood the question.</p> <p>12 You're asking -- can you please repeat</p> <p>13 the question? I have to make sure that I'm</p> <p>14 responding properly.</p> <p>15 Q Sure. No, and I understand.</p> <p>16 I received this letter to Intel in the</p> <p>17 production that Swarm provided to us in this case.</p> <p>18 If a letter like this is in the</p> <p>19 production, does that mean that it was a letter</p> <p>20 that Swarm actually sent at the time --</p> <p>21 A Yes.</p> <p>22 Q -- of the letter?</p>	<p style="text-align: right;">Page 23</p> <p>1 letter is also dated July 16, 2018?</p> <p>2 A Yes.</p> <p>3 Q And it also indicates that it's sent</p> <p>4 by -- excuse me, strike that.</p> <p>5 It also states that it was sent by</p> <p>6 United States mail, right, sir?</p> <p>7 A Correct.</p> <p>8 Q And it's also from Mr. Kelly, right,</p> <p>9 sir?</p> <p>10 A Yes, that's correct.</p> <p>11 Q And this one is addressed to Tim Teter</p> <p>12 of NVIDIA, right, sir?</p> <p>13 A That's correct.</p> <p>14 Q And it's addressed to him specifically</p> <p>15 in Santa Clara, California, right, sir?</p> <p>16 A That's correct.</p> <p>17 Q All right. And you can pull back out,</p> <p>18 Mr. Fahnert. Thank you.</p> <p>19 Mr. Íñiguez, do you recognize this as</p> <p>20 the same letter that Swarm sent to Intel that we</p> <p>21 looked at as Exhibit 1?</p> <p>22 A It is the -- it is essentially -- very</p>
<p style="text-align: right;">Page 22</p> <p>1 A Yes.</p> <p>2 Q Okay. So, for example, if there's a</p> <p>3 letter in that production to Google dated</p> <p>4 July 13th, 2018, does that mean that Swarm</p> <p>5 actually sent that letter to Google at that time</p> <p>6 in July 2018?</p> <p>7 A Yes.</p> <p>8 Q Okay. Thank you, sir.</p> <p>9 Mr. Fahnert, you can take that one off</p> <p>10 the screen, and I'd like to move on to the</p> <p>11 document that is Tab B, and mark that as</p> <p>12 Exhibit 2.</p> <p>13 (Iniguez Exhibit 2 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Mr. Íñiguez, can you see Exhibit 2 on</p> <p>17 the screen?</p> <p>18 A Yes, I can see it.</p> <p>19 Q All right. And do you recognize,</p> <p>20 this, sir, as -- well, strike that. Let's go</p> <p>21 through it.</p> <p>22 Mr. Íñiguez, do you see that this</p>	<p style="text-align: right;">Page 24</p> <p>1 similar content, other than some names within --</p> <p>2 inside the letter.</p> <p>3 Q All right. So at this time,</p> <p>4 July 16th, 2018, Swarm sent out a set of letters</p> <p>5 to different companies, right, sir?</p> <p>6 A Yes.</p> <p>7 Q And each of those letters stated to</p> <p>8 the addressee that Swarm would welcome the</p> <p>9 opportunity to discuss exclusive or non-exclusive</p> <p>10 patent licensing?</p> <p>11 MR. KELLY: Could we see the second</p> <p>12 page of this letter, please?</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Mr. Íñiguez, I'm going to repeat my</p> <p>15 question.</p> <p>16 Did each of those letters sent</p> <p>17 July 16, 2018, state that Swarm would welcome the</p> <p>18 opportunity to discuss exclusive or non-exclusive</p> <p>19 patent licensing arrangements with the addressee?</p> <p>20 MR. KELLY: Could we please see</p> <p>21 page 2?</p> <p>22 MR. SIGLER: Mr. Kelly, do you have an</p>

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<p style="text-align: right;">Page 25</p> <p>1 objection?</p> <p>2 MR. KELLY: Yes. I have an objection</p> <p>3 as to the form.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Okay. Mr. Íñiguez, can you answer my</p> <p>6 question?</p> <p>7 A Yes, the answer is yes.</p> <p>8 Q So Swarm sent letters to many</p> <p>9 companies on July 16th, 2018, that said that Swarm</p> <p>10 would welcome the opportunity to discuss exclusive</p> <p>11 or non-exclusive patent licensing arrangements</p> <p>12 with them, right, sir?</p> <p>13 MR. KELLY: Objection, form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. And many of those companies --</p> <p>17 well, strike that.</p> <p>18 Many of those letters were sent to</p> <p>19 companies in California, right, sir?</p> <p>20 A Some of the companies are in</p> <p>21 California.</p> <p>22 Q All right. Did Swarm send a letter on</p>	<p style="text-align: right;">Page 27</p> <p>1 it this way too.</p> <p>2 Mr. Fahnert, you can take Exhibit 2</p> <p>3 off the screen, and let's pull up Tab C and mark</p> <p>4 that as Exhibit 3, please.</p> <p>5 (Iniguez Exhibit 3 was marked</p> <p>6 for identification.)</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Do you see Exhibit 3 on the screen in</p> <p>9 front of you, Mr. Íñiguez?</p> <p>10 A Yes, I see it.</p> <p>11 Q All right. And so would you agree</p> <p>12 with me, sir, that Swarm sent this same letter</p> <p>13 that we've been discussing in Exhibits 1 and 2 to</p> <p>14 AppsDynamic in San Francisco, California, on</p> <p>15 July 16, 2018?</p> <p>16 A Yes.</p> <p>17 Q All right. Mr. Fahnert, you can pull</p> <p>18 that down and please put up Tab D, which we'll</p> <p>19 mark as Exhibit 4.</p> <p>20 (Iniguez Exhibit 4 was marked</p> <p>21 for identification.)</p> <p>22</p>
<p style="text-align: right;">Page 26</p> <p>1 July 16th -- well, strike that.</p> <p>2 Did Swarm send one of those letters on</p> <p>3 July 16th, 2018, to NVIDIA?</p> <p>4 A The letter that you're showing on the</p> <p>5 screen? Yes.</p> <p>6 Q All right. And sent to NVIDIA in</p> <p>7 California, right, sir?</p> <p>8 A That is correct.</p> <p>9 Q And did Swarm also send this same</p> <p>10 letter in 2018 to a company called AppsDynamic in</p> <p>11 California?</p> <p>12 MR. KELLY: Objection, form.</p> <p>13 THE WITNESS: Can you show me that</p> <p>14 letter? I would like to see it.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. Are you familiar with a company</p> <p>17 called AppsDynamic?</p> <p>18 A I am, but I'm not -- I don't know if</p> <p>19 the date that you're quoting matches what you're</p> <p>20 saying, so I would have to see the letter.</p> <p>21 Q Fair enough. Fair enough. I'm just</p> <p>22 trying to use our time efficiently, but we can do</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Mr. Íñiguez, can you see Exhibit 4 on</p> <p>3 your screen?</p> <p>4 A Yes, I can see it.</p> <p>5 Q All right, sir. So based on</p> <p>6 Exhibit 4, did Swarm send Qualcomm in San Diego,</p> <p>7 California, the same letter that we've been</p> <p>8 discussing in July 2018?</p> <p>9 A Yes. Again, with some changes in</p> <p>10 names, the essence of the letter is the same.</p> <p>11 Q All right. And the essence of the</p> <p>12 letter was that Swarm would like to discuss patent</p> <p>13 licensing arrangements with Qualcomm, right?</p> <p>14 A Correct.</p> <p>15 Q All right. Mr. Fahnert, you can take</p> <p>16 that one down, and let's please move on to Tab E,</p> <p>17 which we'll mark as Exhibit 5.</p> <p>18 (Iniguez Exhibit 5 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, do you see Exhibit 5 on</p> <p>22 the screen there?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A I can see the letter.</p> <p>2 Q And this letter is also dated July 16,</p> <p>3 2018, right?</p> <p>4 A Correct.</p> <p>5 Q And this letter is addressed to a</p> <p>6 gentleman at Cavium in San Jose, California,</p> <p>7 right?</p> <p>8 A That is correct.</p> <p>9 Q And like the others -- well, the --</p> <p>10 strike that.</p> <p>11 Like the other letters we've been</p> <p>12 discussing, this one offers Cavium the opportunity</p> <p>13 to discuss exclusive or non-exclusive patent</p> <p>14 licensing arrangements with Swarm, right?</p> <p>15 A Correct.</p> <p>16 Q Okay, Mr. Fahnert, you can take that</p> <p>17 one down, and let's please move on to Tab F, and</p> <p>18 mark that as Exhibit 6, I believe.</p> <p>19 (Iniguez Exhibit 6 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. SIGLER:</p> <p>22 Q All right, Mr. Íñiguez, do you have</p>	<p style="text-align: right;">Page 31</p> <p>1 (Iniguez Exhibit 7 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Mr. Íñiguez, do you see that Exhibit 7</p> <p>5 is also dated July 16th, 2018?</p> <p>6 A That is correct.</p> <p>7 Q And it's addressed to Brian Stevens at</p> <p>8 Google in Mountain View, California, right?</p> <p>9 A Yes.</p> <p>10 Q And similar to the other letters we've</p> <p>11 seen so far today, this one offers Google the</p> <p>12 opportunity to discuss licensing Swarm's patents,</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q All right. Mr. Fahnert, you can take</p> <p>16 that one down, please, and let's move on to Tab H,</p> <p>17 and mark that as Exhibit 8.</p> <p>18 (Iniguez Exhibit 8 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, do you see that this is a</p> <p>22 letter dated July 16, 2018?</p>
<p style="text-align: right;">Page 30</p> <p>1 Exhibit 6 on your screen there?</p> <p>2 A Yes, I can see it.</p> <p>3 Q And do you see that this is a letter</p> <p>4 dated July 16, 2018?</p> <p>5 A Yes.</p> <p>6 Q And it's addressed to Larry Ellison,</p> <p>7 the chairman of Oracle in Redwood Shores,</p> <p>8 California, right?</p> <p>9 A Yes. Could you please zoom in? It's</p> <p>10 a little hard to read.</p> <p>11 Q Sure.</p> <p>12 A Okay, thank you.</p> <p>13 Yes, the answer is yes.</p> <p>14 Q All right. And similar to the other</p> <p>15 letters we've been looking at, this letter also</p> <p>16 highlights a licensing opportunity for Oracle to</p> <p>17 license some of its patents, right, sir?</p> <p>18 A Yes.</p> <p>19 Q All right, Mr. Fahnert, you can put --</p> <p>20 excuse me, take that one down, and let's please</p> <p>21 put Tab G up on the screen, and mark that as</p> <p>22 Exhibit 7.</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes.</p> <p>2 Q All right. And it's addressed to</p> <p>3 Katherine Adams, the General Counsel of Apple, in</p> <p>4 Cupertino, California, right?</p> <p>5 A That is correct.</p> <p>6 Q And this letter also, like the other</p> <p>7 ones -- well, strike that.</p> <p>8 This letter offers Apple the</p> <p>9 opportunity to discuss licensing Swarm's patents,</p> <p>10 right, sir?</p> <p>11 A Yes.</p> <p>12 Q All right. I have some follow-up</p> <p>13 questions on some of these entities.</p> <p>14 Do you know if NVIDIA ever responded</p> <p>15 to the letter that Swarm sent them in July 2018?</p> <p>16 A We did not get a response from NVIDIA.</p> <p>17 Q Did you get a response from</p> <p>18 AppsDynamic?</p> <p>19 A No.</p> <p>20 Q Let me back up for a second.</p> <p>21 Has Swarm -- other than the July 16,</p> <p>22 2018, letter, has Swarm sent any other letters or</p>

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<p style="text-align: right;">Page 33</p> <p>1 emails or other communications to NVIDIA?</p> <p>2 A Again, I would have to go back to all</p> <p>3 the files that we produced to see an earlier</p> <p>4 letter to NVIDIA. I don't recall this on the top</p> <p>5 of my head.</p> <p>6 Q Okay. After the July 16, 2018, letter</p> <p>7 to Qualcomm, did Swarm have any additional</p> <p>8 communications with Qualcomm?</p> <p>9 A Same answer as for NVIDIA. I -- well,</p> <p>10 they did not respond, and again, when you say</p> <p>11 "additional communication," I would have to go</p> <p>12 back to all the documents that we produced to find</p> <p>13 any other document.</p> <p>14 Q Do you recall as you sit here today</p> <p>15 any further communications with Qualcomm?</p> <p>16 A No, I don't recall any communication</p> <p>17 with Qualcomm.</p> <p>18 Q All right. And sitting here today, do</p> <p>19 you recall any further communications with Cavium?</p> <p>20 A No, no. No communication with Cavium.</p> <p>21 Q All right. And sitting here today, do</p> <p>22 you recall any further communications between</p>	<p style="text-align: right;">Page 35</p> <p>1 a notice that he sent later on, a notice that he</p> <p>2 sent -- he used his -- a Google.com email;</p> <p>3 however, he was not contacting me in the name of</p> <p>4 Google. He was contacting me in the name of</p> <p>5 Global Ventures, his company.</p> <p>6 Q Okay, we'll come back to that in a</p> <p>7 bit.</p> <p>8 Mr. Fahnert, can you please put Tab I</p> <p>9 on the screen, and we'll mark that as Exhibit 9.</p> <p>10 (Iniguez Exhibit 9 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Mr. Íñiguez, do you have Exhibit 9 on</p> <p>14 your screen?</p> <p>15 A Yes, I can see it.</p> <p>16 Q All right. And if you can blow up the</p> <p>17 whole thing, Mr. Fahnert, that would be great.</p> <p>18 Thank you.</p> <p>19 All right. And do you see, sir, that</p> <p>20 this is a September 27th, 2018, letter?</p> <p>21 A Yes, I can see it.</p> <p>22 Q And it's addressed to Mr. Kelly, your</p>
<p style="text-align: right;">Page 34</p> <p>1 Swarm and Oracle?</p> <p>2 A No communication.</p> <p>3 Q All right. And do you recall any</p> <p>4 further communications between Swarm and Google?</p> <p>5 A Swarm -- what is the name of the</p> <p>6 company?</p> <p>7 Q Google.</p> <p>8 A Which one?</p> <p>9 Q Google.</p> <p>10 A Oh, Google. No, no.</p> <p>11 There's -- there's a person there</p> <p>12 who -- I did not have any communication with</p> <p>13 Google, that's it.</p> <p>14 Q You said there is a person there.</p> <p>15 What did you mean by that?</p> <p>16 A Yes. On the documents that we</p> <p>17 produced, there is a person there that has a -- is</p> <p>18 an investor. I think it's called Global -- Global</p> <p>19 Ventures, and you have seen that on the documents</p> <p>20 that we produced.</p> <p>21 And when I -- when he send me the</p> <p>22 email in order to provide the pitch deck, he sent</p>	<p style="text-align: right;">Page 36</p> <p>1 attorney, correct?</p> <p>2 A Correct.</p> <p>3 Q And it's from Denise Kerstein of</p> <p>4 Apple, Inc., right, sir?</p> <p>5 A Correct.</p> <p>6 Q And let's go to the second paragraph,</p> <p>7 please. It says, "We would like to thank you for</p> <p>8 the offer to sell or license your patent(s) to</p> <p>9 Apple as a business opportunity."</p> <p>10 Do you see that, sir?</p> <p>11 A Yes, I see it.</p> <p>12 Q All right. So here Apple is thanking</p> <p>13 Swarm for the offer to sell or license its patents</p> <p>14 to Apple, right?</p> <p>15 MR. KELLY: Objection.</p> <p>16 THE WITNESS: I see it, yes.</p> <p>17 BY MR. SIGLER:</p> <p>18 Q All right. And Apple goes on to</p> <p>19 say that -- well, strike that.</p> <p>20 This letter goes on to say "Apple is</p> <p>21 not interested in purchasing or licensing them."</p> <p>22 Do you see that, sir?</p>

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<p style="text-align: right;">Page 37</p> <p>1 A Yes, I see that.</p> <p>2 Q Did Swarm respond to this letter from</p> <p>3 Ms. Kerstein?</p> <p>4 A From that letter? No. That was the</p> <p>5 end of the communication.</p> <p>6 Q Why didn't Swarm respond to Apple's</p> <p>7 letter?</p> <p>8 MR. KELLY: Objection.</p> <p>9 THE WITNESS: Because the letter from</p> <p>10 Swarm to Apple said that this is an opportunity, a</p> <p>11 licensing opportunity, and then Apple responded</p> <p>12 that it's not -- it's not interested in that</p> <p>13 opportunity, and that was the end of it.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Okay. Swarm also sent a letter in</p> <p>16 July 2018 to Juniper, right?</p> <p>17 A Can you show me the letter? Because</p> <p>18 I'm not sure about the date that you're referring.</p> <p>19 I would like to see it.</p> <p>20 Q Okay, we'll get to that. Let me make</p> <p>21 it less specific than that.</p> <p>22 Swarm has also sent some letters to</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Okay. All right, sir.</p> <p>2 We can take the Apple document off the</p> <p>3 screen, Mr. Fahnert. Thank you.</p> <p>4 All right, so based on the exhibits</p> <p>5 we've seen together so far, Mr. Íñiguez, you'd</p> <p>6 agree that Swarm sent letters in 2018 to Apple,</p> <p>7 NVIDIA, Google, Oracle, Cavium, Qualcomm, and</p> <p>8 AppsDynamic and Intel offering them an opportunity</p> <p>9 to license Swarm's patents, right, sir?</p> <p>10 MR. KELLY: Object. Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q All right. And why did Swarm send</p> <p>15 those letters to these particular companies in</p> <p>16 2018?</p> <p>17 A Because, as I mention in that letter,</p> <p>18 it was a good match between what Swarm had to</p> <p>19 offer and what those companies have to offer, and</p> <p>20 for that reason, we presented an opportunity.</p> <p>21 Q Who made the decision about which</p> <p>22 companies to send that letter to?</p>
<p style="text-align: right;">Page 38</p> <p>1 Juniper, right?</p> <p>2 A At one point, I did send letters to</p> <p>3 Juniper.</p> <p>4 Q And those letters similarly offered</p> <p>5 the opportunity to license Swarm's patents, right?</p> <p>6 A Yes, they offered the --</p> <p>7 MR. KELLY: Objection to the form of</p> <p>8 that question.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q And Juniper provided some responses</p> <p>11 stating that they weren't interested in licensing</p> <p>12 Swarm's patents, right?</p> <p>13 A Can you show me the correspondence</p> <p>14 that you're referring to?</p> <p>15 Q Yeah, we'll get to that in a bit.</p> <p>16 We'll get to that in a bit.</p> <p>17 You don't recall that, though, that</p> <p>18 Juniper told Swarm that it wasn't interested in</p> <p>19 licensing Swarm's patents?</p> <p>20 A In order to provide a truthful answer,</p> <p>21 it's not a simple yes or no. I would like to see</p> <p>22 the letter and elaborate on the topic.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. KELLY: Objection.</p> <p>2 THE WITNESS: It was a --</p> <p>3 MR. KELLY: I'm going to instruct the</p> <p>4 witness not to answer to the extent that would</p> <p>5 invade the attorney-client privilege.</p> <p>6 MR. SIGLER: Yeah, my question is just</p> <p>7 who. I'm not asking for the content of the</p> <p>8 discussion. So who made that decision?</p> <p>9 THE WITNESS: I did.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q Okay. And so, for example, why did</p> <p>12 you decide to send the letter to NVIDIA that we</p> <p>13 saw?</p> <p>14 MR. KELLY: Object to that question to</p> <p>15 the extent it calls for attorney-client privileged</p> <p>16 information.</p> <p>17 THE WITNESS: Because Swarm provides a</p> <p>18 computer architecture that is a good match for any</p> <p>19 of those companies.</p> <p>20 MR. SIGLER: Okay. Mr. Fahnert, could</p> <p>21 we please put Tab J on the screen, and let's mark</p> <p>22 that as Exhibit 10.</p>

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<p style="text-align: right;">Page 41</p> <p>1 (Iniguez Exhibit 10 was marked 2 for identification.) 3 THE VIDEOGRAPHER: My apologies. It 4 appears I lost internet and got booted out of 5 Zoom. 6 MR. SIGLER: Okay, no worries. We'll 7 wait while you straighten it out. 8 THE VIDEOGRAPHER: Okay, I should be 9 all set, so stand by and we can be recording 10 again. Okay, back on record. The time is 9:41. 11 BY MR. SIGLER: 12 Q All right. And Mr. Fahnert, we wanted 13 to put Tab J on the screen, please, and we'll 14 identify that as Exhibit 10. Thank you, sir. And 15 if you could, Mr. Fahnert, if you could just blow 16 up the top half of that document, please? 17 All right, Mr. Íñiguez, can you see 18 Exhibit 10 on your screen? 19 A Yes, I see it. 20 Q And do you see that it's dated 21 December 5, 2014, sir? 22 A Yes.</p>	<p style="text-align: right;">Page 43</p> <p>1 A We have the content of the letter, and 2 we have the email that shows when I approved that 3 content of that letter. 4 Q Okay. Where would that letter itself 5 be located? 6 A The letter that Apple received? I 7 don't know if Apple has kept it; perhaps they 8 have. 9 Q Where did Swarm search for that 10 letter? 11 A I do not have -- if you follow the 12 email thread, you can see that I was given to 13 approve the content of the letter, and I approved 14 it, and then the letter was sent by the firm. 15 I do not have a copy of that letter. 16 Q And I don't have a copy of the email 17 you're talking about, as far as I know, so, 18 Counsel, we're going to ask for a copy of that 19 email that apparently shows that this letter -- 20 excuse me, that a letter was sent to Apple by 21 Swarm in 2014. 22 MR. KELLY: Mr. Sigler, I'm fairly</p>
<p style="text-align: right;">Page 42</p> <p>1 Q And it's addressed to your attorney, 2 Mr. Kelly, right, sir? 3 A Yes. 4 Q And actually, if you could back out, 5 Mr. Fahnert, and show us the bottom, please. 6 Thank you, sir. 7 And Mr. Íñiguez, this letter is from 8 Jeff Lasker of Apple Inc., right, sir? 9 A Yes. 10 Q Mr. Fahnert, if we could go to that 11 top paragraph again, please, sir. 12 And Mr. Íñiguez, the letter starts -- 13 the letter from Mr. Lasker starts by saying, "I've 14 been asked to respond to your letter to Apple." 15 Do you see that, sir? 16 A Correct. 17 Q And did Swarm send a letter to Apple 18 in 2014? 19 A Yes. 20 Q And do you understand, sir, that we've 21 asked Swarm to provide that letter, but we've been 22 told Swarm doesn't have it?</p>	<p style="text-align: right;">Page 44</p> <p>1 certain that that was included in the documents we 2 produced. 3 And we can do this on or off the 4 record, but just to clarify, that was seven years 5 ago, and that was two law firms ago for me. We 6 don't have that letter. I assumed that 7 Mr. Iniguez did. He doesn't have it either. 8 So what we did, in an effort to 9 respond to your request regarding contacts with 10 California, we provided you a list of the names of 11 the companies that each of the same template 12 letters went to, and we provided you that template 13 letter. 14 I don't have copies. If you need 15 them, you can subpoena Ingrassia, or I've offered 16 in the past to contact them informally and see if 17 we can get hard copies. 18 They're a paperless law firm. They're 19 a prosecution firm primarily, and they don't 20 maintain paper copies, to my recollection. I 21 haven't been there in seven years, though. 22 But you do have a list of all the</p>

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<p style="text-align: right;">Page 45</p> <p>1 contacts, and you have the template letter.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q And just for clarity, did anyone on</p> <p>4 behalf of Swarm ask that firm for copies of these</p> <p>5 letters?</p> <p>6 A I did not.</p> <p>7 MR. SIGLER: Mr. Kelly, did outside</p> <p>8 counsel ask that firm, on behalf of Swarm, for</p> <p>9 copies of those letters?</p> <p>10 MR. KELLY: That would invade the</p> <p>11 attorney-client privilege.</p> <p>12 Mr. Sigler, I will represent to you</p> <p>13 that we made the good-faith decision that we were</p> <p>14 fully responsive to your request for contacts by</p> <p>15 giving you the names of every company that letter</p> <p>16 went to, and giving you the letter.</p> <p>17 If we had the letter as well, we'd</p> <p>18 give it to you, but we don't.</p> <p>19 MR. SIGLER: All right, and we'll get</p> <p>20 to that, but of course, as experienced counsel,</p> <p>21 you understand that those are Mr. Íñiguez's and</p> <p>22 Swarm's files. They have every right to those</p>	<p style="text-align: right;">Page 47</p> <p>1 That was seven years ago, and they</p> <p>2 have a document retention policy that doesn't</p> <p>3 retain documents.</p> <p>4 Do you want me to -- if Judge Donato</p> <p>5 requires me to call them, I certainly will. I</p> <p>6 don't know that that's going to result in getting</p> <p>7 you the letters, but I'll do whatever the Court</p> <p>8 instructs.</p> <p>9 MR. SIGLER: Well, let's see what the</p> <p>10 testimony is, if it's consistent with your</p> <p>11 representations, Mr. Kelly. Hopefully, it will</p> <p>12 be.</p> <p>13 Mr. Íñiguez -- and actually,</p> <p>14 Mr. Fahnert, you can take this document off the</p> <p>15 screen, please.</p> <p>16 All right, let's put -- apologies.</p> <p>17 Let's put Tab XX on the screen, please, and mark</p> <p>18 that -- well, actually, Mr. Fahnert, strike that.</p> <p>19 Let's put Tab YY on the screen, please, and mark</p> <p>20 that as Exhibit 11.</p> <p>21 (Iniguez Exhibit 11 was marked</p> <p>22 for identification.)</p>
<p style="text-align: right;">Page 46</p> <p>1 files from the law firm, and should --</p> <p>2 MR. KELLY: I don't know that --</p> <p>3 MR. SIGLER: -- and should have</p> <p>4 asked -- and should have asked the firm for those.</p> <p>5 Those are within your possession, custody and</p> <p>6 control. So we're going to note --</p> <p>7 MR. KELLY: They are not --</p> <p>8 MR. SIGLER: -- on the record that --</p> <p>9 MR. KELLY: Mr. Sigler, they are not</p> <p>10 in our custody and control. They are not.</p> <p>11 MR. SIGLER: Well, Swarm, as the</p> <p>12 client, has a right to those materials under the</p> <p>13 law, and they should have been produced.</p> <p>14 MR. KELLY: Mr. Sigler, you're</p> <p>15 explaining -- trying to instruct me as to how I</p> <p>16 need to handle my client. We've handled it</p> <p>17 entirely properly, I assure you.</p> <p>18 If we had the letters, we'd give them</p> <p>19 to you. We don't, so we gave you the names of the</p> <p>20 recipients and the template form of the letter,</p> <p>21 which we represent to you is identical in every</p> <p>22 case.</p>	<p style="text-align: right;">Page 48</p> <p>1 BY MR. SIGLER:</p> <p>2 Q All right, Mr. Íñiguez, do you have</p> <p>3 Exhibit 11 on the screen in front of you, sir?</p> <p>4 A Yeah. Can you please zoom in?</p> <p>5 Q Yeah. Mr. Fahnert, can you zoom in,</p> <p>6 please? Thank you.</p> <p>7 Do you recognize this document,</p> <p>8 Mr. Íñiguez?</p> <p>9 A Yes, I do.</p> <p>10 Q And is this the template of the letter</p> <p>11 that Swarm sent to Apple in 2014?</p> <p>12 A Yes, that's correct.</p> <p>13 Q And did you review this template at</p> <p>14 the time in 2014?</p> <p>15 A Did I -- can you repeat that question?</p> <p>16 Q Well, let me back up.</p> <p>17 Who wrote this letter in 2014?</p> <p>18 MR. KELLY: Object to form.</p> <p>19 THE WITNESS: Assuming -- can you</p> <p>20 repeat the question?</p> <p>21 BY MR. SIGLER:</p> <p>22 Q Sure. Who wrote this letter in 2014?</p>

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<p style="text-align: right;">Page 49</p> <p>1 MR. KELLY: Same objection.</p> <p>2 THE WITNESS: This letter was written</p> <p>3 in conjunction with my patent attorney.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q And your patent attorney was</p> <p>6 Mr. Kelly, right?</p> <p>7 A Correct.</p> <p>8 Q So you helped write this letter; is</p> <p>9 that right?</p> <p>10 MR. KELLY: Objection.</p> <p>11 THE WITNESS: Mr. Sigler, I am not an</p> <p>12 attorney. I basically conveyed the information</p> <p>13 that I want to present, and then my attorney takes</p> <p>14 care of the mechanics of writing the letter.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. So did Mr. Kelly write this</p> <p>17 letter?</p> <p>18 MR. KELLY: Objection.</p> <p>19 THE WITNESS: Again, as I mentioned</p> <p>20 before, I provided -- provided the idea that I</p> <p>21 wanted to convey, and my attorney, Mr. Kelly,</p> <p>22 wrote -- put this in writing.</p>	<p style="text-align: right;">Page 51</p> <p>1 (Iniguez Exhibit 12 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Okay, so Mr. Íñiguez, do you see</p> <p>5 Exhibit 12 in front of you there?</p> <p>6 A I can see it.</p> <p>7 Q Okay. Do you recognize this as a</p> <p>8 template of the letter that was sent to Apple and</p> <p>9 others in 2014?</p> <p>10 A Is that the same letter you showed me</p> <p>11 a minute before, or is that a different letter?</p> <p>12 Q Well, I got two templates from your</p> <p>13 counsel, and so I'm trying to determine what might</p> <p>14 be different between these two letters, but I</p> <p>15 can't really answer that on my own.</p> <p>16 So do you recall there being two</p> <p>17 different templates for the letter that went out</p> <p>18 in 2014?</p> <p>19 A Can you show me the differences</p> <p>20 between those two letters?</p> <p>21 Q Sure. Let's stick with this one for a</p> <p>22 moment. If we could go to the paragraph that</p>
<p style="text-align: right;">Page 50</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay, understood. That's all I was</p> <p>3 trying to determine. Okay.</p> <p>4 And this -- well, strike that.</p> <p>5 If you actually go down, Mr. Fahnert,</p> <p>6 please, to the signature. The letter states that</p> <p>7 it's from Mr. Kelly, right, sir?</p> <p>8 A Correct.</p> <p>9 Q All right. And we actually got two</p> <p>10 templates from your attorney, so if we could take</p> <p>11 this one off the screen, and we may come back to</p> <p>12 it, Mr. Fahnert, but if you take that off and put</p> <p>13 up YY, please -- or excuse me, yes, Tab -- was</p> <p>14 that Tab YY, Mr. Fahnert? I'm sorry.</p> <p>15 THE VIDEOGRAPHER: That was Tab YY,</p> <p>16 yes.</p> <p>17 MR. SIGLER: Let's go Tab XX, please.</p> <p>18 MR. KELLY: Is this 12?</p> <p>19 MR. SIGLER: I was going to just ask.</p> <p>20 Am I correct that this is Exhibit 12?</p> <p>21 THE VIDEOGRAPHER: This is 12.</p> <p>22 MR. SIGLER: Okay, thank you, sir.</p>	<p style="text-align: right;">Page 52</p> <p>1 starts with "Mr. Íñiguez," please.</p> <p>2 A Yes, I can see that.</p> <p>3 Q Okay, you can see that, all right.</p> <p>4 And then, Mr. Fahnert, would it be</p> <p>5 possible to put up that same paragraph from the</p> <p>6 other letter, please, Exhibit 11?</p> <p>7 A Yes, it's possible.</p> <p>8 (Exhibits 11 and 12 displayed</p> <p>9 on Zoom screen.)</p> <p>10 BY MR. SIGLER:</p> <p>11 Q All right, do you see those there,</p> <p>12 Mr. Íñiguez?</p> <p>13 A Yes, I see.</p> <p>14 Q All right. And on the first letter</p> <p>15 that we see at the top of the screen there, it</p> <p>16 appears to contain less information than the</p> <p>17 second -- that the second letter.</p> <p>18 Do you see in the second letter it</p> <p>19 says -- it mentions that you held key positions at</p> <p>20 Motorola and Freescale, sir?</p> <p>21 A Yes, I can see that.</p> <p>22 Q And do you see that in the other</p>

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<p style="text-align: right;">Page 53</p> <p>1 letter that's shown above that?</p> <p>2 A It's not there.</p> <p>3 Q And in the last sentence of this</p> <p>4 paragraph in the bottom letter, it says that</p> <p>5 you're a leading contributor, and references the</p> <p>6 IEEE, refers to DesignCon and DVCon as the</p> <p>7 dominant technical conferences.</p> <p>8 Do you see that, sir?</p> <p>9 A Yes. For multiple years, I was a</p> <p>10 member of the Technical Committee for those two</p> <p>11 conferences, DesignCon and DVCon. And what I did</p> <p>12 was a -- I helped with the review -- the peer</p> <p>13 review of papers submitted to conferences.</p> <p>14 Q And we can -- Mr. Fahner, if you</p> <p>15 could back out of these paragraphs, and let's go</p> <p>16 to -- let's focus on -- excuse me. Let's focus on</p> <p>17 Exhibit 11, please, and let's just go to the whole</p> <p>18 body of it, please.</p> <p>19 Do you see the start of the letter,</p> <p>20 Mr. Íñiguez, says "We represent</p> <p>21 Swarm Technology™, LLC and its principal, Alfonso</p> <p>22 Íñiguez, in connection with intellectual property</p>	<p style="text-align: right;">Page 55</p> <p>1 legal advantage."</p> <p>2 Do you see that, sir?</p> <p>3 A Yes, I see it.</p> <p>4 Q And so you'd agree that Swarm's</p> <p>5 portfolio would need to be licensed to the partner</p> <p>6 for them to achieve these advantages, right?</p> <p>7 MR. KELLY: Objection, form.</p> <p>8 THE WITNESS: I mentioned before, we</p> <p>9 presented an opportunity to license those patents.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q Okay. And this letter in 2014 was</p> <p>12 presenting that opportunity to license Swarm's</p> <p>13 patents, right?</p> <p>14 MR. KELLY: Objection to form.</p> <p>15 THE WITNESS: Mr. Sigler, I am not an</p> <p>16 attorney. I cannot make a legal conclusion by</p> <p>17 looking into that letter.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Well, was this letter offering an</p> <p>20 opportunity to license Swarm's patent portfolio,</p> <p>21 sir?</p> <p>22 MR. KELLY: I'll instruct the witness</p>
<p style="text-align: right;">Page 54</p> <p>1 matters"?</p> <p>2 A Yes.</p> <p>3 Q And in the second paragraph it</p> <p>4 describes some of Swarm's patent applications,</p> <p>5 right, sir?</p> <p>6 A That is correct.</p> <p>7 Q All right. And one of those</p> <p>8 applications is the -- ends in the numbers 332,</p> <p>9 right, sir?</p> <p>10 A Yes.</p> <p>11 Q And do you recognize that as the</p> <p>12 application that became the '004 patent, sir?</p> <p>13 A I would have to go back to the</p> <p>14 U.S. Patent Office files to verify that</p> <p>15 information.</p> <p>16 Q Okay. Let's go to the second</p> <p>17 paragraph from the bottom of the letter, and the</p> <p>18 last sentence of it says, "We believe Swarm's</p> <p>19 technology will play a pivotal role in the</p> <p>20 emerging IoT paradigm, and that Swarm's patent</p> <p>21 portfolio can provide Swarm's joint development</p> <p>22 partner with an unprecedented competitive and</p>	<p style="text-align: right;">Page 56</p> <p>1 that if you need a moment to review the text of</p> <p>2 the letter, you're welcome to do that.</p> <p>3 THE WITNESS: Okay, I need a moment to</p> <p>4 review.</p> <p>5 MR. SIGLER: Sure.</p> <p>6 THE WITNESS: The letter is saying</p> <p>7 that Swarm is posing a joint development, to be a</p> <p>8 joint development partner, and again --</p> <p>9 BY MR. SIGLER:</p> <p>10 Q Go ahead, sir. I'm sorry.</p> <p>11 A It's an opportunity to co-develop.</p> <p>12 Q And the part that I was just reading</p> <p>13 that refers to providing the partner with an</p> <p>14 unprecedented competitive and legal advantage,</p> <p>15 what did Swarm mean by "legal advantage"?</p> <p>16 MR. KELLY: You can read the entire</p> <p>17 contents of the letter, if you'd like to do that,</p> <p>18 before you answer questions regarding the content</p> <p>19 of that letter.</p> <p>20 THE WITNESS: Mm-hmm.</p> <p>21 MR. SIGLER: Mr. Kelly, I'm going to</p> <p>22 caution you again to stop with the speaking</p>

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<p style="text-align: right;">Page 57</p> <p>1 objections and commentary. If you have an 2 objection, make it. 3 If Mr. Íñiguez would like to read part 4 of the letter to refresh his memory or help him 5 answer, he can identify that for me. 6 Again, what you're doing is directly 7 contrary to Judge Donato's order on discovery in 8 civil cases. 9 So Mr. Íñiguez, I'm going to ask my 10 question again. 11 What is the legal advantage to the 12 joint development partner that Swarm is offering 13 here? 14 MR. KELLY: Objection to form. 15 THE WITNESS: Again, Mr. Sigler, I 16 cannot speculate. I cannot make a legal judgment 17 because I am not an attorney. 18 BY MR. SIGLER: 19 Q Okay. You'd agree, however, that this 20 letter that was sent in 2014 references Swarm's 21 patent applications, right, sir? 22 A Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 materials that this letter is referring to besides 2 those videos? 3 A The collateral material is basically 4 the explanation of this new architecture, and 5 this -- 6 Q And did those collateral -- go ahead, 7 sir. 8 A Yeah. And this is -- this is now 9 provided on my website. I have a tab on my 10 website that says something along the lines of 11 academy, and that provides the videos that explain 12 how this architecture works. 13 Q Okay. Mr. Fahnert, you can take this 14 document off the screen, please, and let's put up 15 Tab ZZ, please, as Exhibit 13. 16 (Íñiguez Exhibit 13 was marked 17 for identification.) 18 BY MR. SIGLER: 19 Q All right, Mr. Íñiguez, do you see 20 that this is a letter dated May 12, 2001 [sic]? 21 A Yes, I see it. 22 Could you please zoom in?</p>
<p style="text-align: right;">Page 58</p> <p>1 Q All right. And the final paragraph of 2 the letter says, "We would be happy to provide 3 collateral materials, including didactic video 4 tools, to assist your investigation and analysis, 5 at your request." 6 Do you see that, sir? 7 A That is correct. 8 Q What is this letter referring to when 9 it says "collateral materials"? 10 MR. KELLY: Objection, form. 11 THE WITNESS: Yes, I provided -- well, 12 I shouldn't say "provided." I designed or 13 developed -- that's the word. I developed a set 14 of didactic videos that explain this new paradigm 15 in this computer architecture. 16 They're required, because what I did, 17 I invented a new paradigm in computing, and I 18 needed to explain to other companies how this 19 worked. For this purpose, I made those didactic 20 videos. 21 BY MR. SIGLER: 22 Q Okay. Were there other collateral</p>	<p style="text-align: right;">Page 60</p> <p>1 Q Sure. Mr. Fahnert, can you do that, 2 please? All right. 3 And it's addressed to me and some of 4 my colleagues, right, sir? 5 A Yes, I can see that. 6 Q All right. And if we could go to -- 7 Mr. Fahnert, if you could take us through the last 8 page, please. 9 All right, Mr. Íñiguez, do you see 10 that this letter is signed by a Mr. Elvis 11 Sulejmani? Do you see that on the screen, sir? 12 A Yes, I can see it. 13 Q And he's a paralegal at Beus Gilbert, 14 Swarm's counsel in this matter, right, sir? 15 A Correct. 16 Q All right. Mr. Fahnert, can you take 17 us to page 2 of the letter, please? 18 Do you see there's a list here on 19 page 2 at the bottom, sir? 20 A Yes, I see it. 21 Q All right. And that list actually 22 continues on over into page 3. And Mr. Fahnert,</p>

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<p style="text-align: right;">Page 61</p> <p>1 could you also put that on the screen?</p> <p>2 All right, do you see that list of 23</p> <p>3 companies on the screen, Mr. Íñiguez?</p> <p>4 A Yes, I see it.</p> <p>5 Q And are these the companies that Swarm</p> <p>6 sent that template -- strike that.</p> <p>7 Are these the companies that Swarm</p> <p>8 sent a letter to in 2014 that matches the</p> <p>9 templates we just saw?</p> <p>10 A That is -- that is the proposed list,</p> <p>11 but I must -- I must say that I don't believe that</p> <p>12 we sent letters to Free [sic]. So that was the</p> <p>13 initial proposal, and at the end, I don't know --</p> <p>14 I don't recall the exact companies that we</p> <p>15 selected, but sure, I know that we did not send to</p> <p>16 Freescale.</p> <p>17 Q Okay. Other than Freescale, did Swarm</p> <p>18 send letters in 2014 using the template we just</p> <p>19 saw? Strike that.</p> <p>20 Aside from Freescale, did Swarm send a</p> <p>21 letter to each of the companies on this list</p> <p>22 matching the template we just saw?</p>	<p style="text-align: right;">Page 63</p> <p>1 Q Okay. And are you aware, sir, that</p> <p>2 those companies I just mentioned are based in</p> <p>3 California?</p> <p>4 A Yes.</p> <p>5 Q All right. So Swarm sent letters to</p> <p>6 each of those companies in 2014 in California,</p> <p>7 right, sir?</p> <p>8 MR. KELLY: Objection to form.</p> <p>9 THE WITNESS: We were not targeting</p> <p>10 the State of California. Those companies are</p> <p>11 located throughout the world, and some happen to</p> <p>12 be located in California, but that was not our</p> <p>13 target.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Yeah, that wasn't my question, sir.</p> <p>16 My question was did Swarm send letters</p> <p>17 to those companies that I referenced -- Google,</p> <p>18 Nest, Apple, Cisco, Intel, Oracle, Qualcomm, HP,</p> <p>19 Atmel, and NVIDIA -- in 2014 in California?</p> <p>20 MR. KELLY: Objection to form.</p> <p>21 THE WITNESS: Yes.</p> <p>22</p>
<p style="text-align: right;">Page 62</p> <p>1 A I would say to some. Again, National</p> <p>2 Instruments, I don't believe we sent one to</p> <p>3 National Instruments.</p> <p>4 Q Did Swarm send a letter using the</p> <p>5 template we just saw to Google in 2014?</p> <p>6 A Yes.</p> <p>7 Q Did Swarm send a similar letter to</p> <p>8 Nest in 2014?</p> <p>9 A Yes.</p> <p>10 Q Did Swarm send a similar letter to</p> <p>11 Apple in 2014?</p> <p>12 A Yes.</p> <p>13 Q Did Swarm send a letter matching the</p> <p>14 template to Cisco in 2014?</p> <p>15 A Yes.</p> <p>16 Q All right. Did Swarm also send</p> <p>17 letters matching the template we just saw in 2014</p> <p>18 to Intel, Oracle, Qualcomm, HP, AMD, Atmel, and</p> <p>19 NVIDIA?</p> <p>20 A From the companies that you mentioned,</p> <p>21 I am not sure about AMD. The rest, the answer is</p> <p>22 yes.</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Thank you, sir.</p> <p>3 Has Swarm ever told any company that</p> <p>4 it requires a license to Swarm's patents?</p> <p>5 A Okay, can you please repeat that</p> <p>6 question? Because the AC just turned on here, and</p> <p>7 I have a problem hearing.</p> <p>8 Q No problem. No problem.</p> <p>9 Had Swarm ever told any company that</p> <p>10 it requires a license to Swarm's patents?</p> <p>11 A We never -- we never asked any</p> <p>12 company. We never made any demands asking that</p> <p>13 they require a license.</p> <p>14 Q Okay, but has Swarm ever said to a</p> <p>15 company that it requires a license to Swarm's</p> <p>16 patents?</p> <p>17 A We did -- we offer the opportunity,</p> <p>18 but we did not make any demands.</p> <p>19 Q Okay. So Swarm never told any</p> <p>20 company that it required a license to Swarm's</p> <p>21 patents?</p> <p>22 MR. KELLY: Object to the form.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Object to the form.</p> <p>2 THE WITNESS: Again, when we -- when</p> <p>3 we sent those letters, we said that this is not an</p> <p>4 accusation of infringement. We just invited the</p> <p>5 opportunity to see this opportunity to license.</p> <p>6 That was it.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Well, if a company required a license</p> <p>9 to Swarm's patents, that would mean that that</p> <p>10 company was infringing Swarm's patents, right,</p> <p>11 sir?</p> <p>12 MR. KELLY: Objection, form.</p> <p>13 THE WITNESS: Are you asking if I said</p> <p>14 to a company that they are required? Can you --</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Well, it sounds like from your</p> <p>17 testimony that Swarm never said to a company that</p> <p>18 you require a license to my patents, right?</p> <p>19 A To the best that I know, based on the</p> <p>20 documentation that I have provided and seen and</p> <p>21 have, I never demanded the requirement of a</p> <p>22 license.</p>	<p style="text-align: right;">Page 67</p> <p>1 answer that question to the extent it would</p> <p>2 require him to divulge attorney-client privileged</p> <p>3 information.</p> <p>4 THE WITNESS: Again, I am not an</p> <p>5 attorney. You're asking me to make a legal</p> <p>6 judgment, and I cannot do the -- I am not -- I'm</p> <p>7 not an attorney.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Okay, so -- okay, let me move on.</p> <p>10 Swarm also sent letters to Juniper,</p> <p>11 Cisco, Arista, HP, and Apstra about Swarm's</p> <p>12 patents, right, sir?</p> <p>13 A Yes, but can you repeat that list --</p> <p>14 Q Sure.</p> <p>15 A -- of names?</p> <p>16 Q Well, let's go one by one.</p> <p>17 Swarm also sent letters to Juniper</p> <p>18 about Swarm's patents, right?</p> <p>19 MR. KELLY: Object to the form.</p> <p>20 THE WITNESS: Right.</p> <p>21 BY MR. SIGLER:</p> <p>22 Q And Swarm also sent letters to Cisco</p>
<p style="text-align: right;">Page 66</p> <p>1 Q Because if Swarm -- oh, I'm sorry,</p> <p>2 sir, go ahead.</p> <p>3 A Again, we just -- this is very clear</p> <p>4 in every letter. We presented an opportunity for</p> <p>5 the license, but an opportunity is not a</p> <p>6 requirement.</p> <p>7 Q Right. And so if Swarm said to a</p> <p>8 company we think you're required to take a license</p> <p>9 to our patents, that would mean that Swarm thought</p> <p>10 that company was infringing Swarm's patents,</p> <p>11 right?</p> <p>12 MR. KELLY: Objection to the form of</p> <p>13 the question.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q I can ask the question again.</p> <p>16 Mr. Íñiguez, you'd agree with me that</p> <p>17 if Swarm told a company that it requires a license</p> <p>18 to Swarm's patents, that would mean that Swarm</p> <p>19 believed that company was infringing Swarm's</p> <p>20 patents, right?</p> <p>21 MR. KELLY: Object to the form of the</p> <p>22 question, and also instruct the witness not to</p>	<p style="text-align: right;">Page 68</p> <p>1 about licensing Swarm's patents, right?</p> <p>2 A Correct.</p> <p>3 Q And Swarm also sent letters to Arista</p> <p>4 about licensing Swarm's patents, right?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And Swarm also sent letters to HPE</p> <p>9 offering the opportunity to license Swarm's</p> <p>10 patents, right?</p> <p>11 MR. KELLY: Same objection.</p> <p>12 THE WITNESS: Correct.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q And Swarm also sent letters to Apstra</p> <p>15 offering them the opportunity to license Swarm's</p> <p>16 patents, right?</p> <p>17 A Correct.</p> <p>18 Q And those companies are all based in</p> <p>19 California, right, sir?</p> <p>20 MR. KELLY: Objection, form.</p> <p>21 THE WITNESS: Yes, they are.</p> <p>22</p>

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<p style="text-align: right;">Page 69</p> <p>1 BY MR. SIGLER:</p> <p>2 Q And beyond this group of companies we</p> <p>3 talked about so far today, has Swarm contacted any</p> <p>4 other companies in California about licensing</p> <p>5 Swarm's patents?</p> <p>6 A Those are only -- the only companies</p> <p>7 in California.</p> <p>8 Q Okay. Would you like to take a break,</p> <p>9 Mr. Íñiguez? I can keep going, or we can take a</p> <p>10 break. It's up to you. I'm at a stopping point.</p> <p>11 A Yes, let's take a break.</p> <p>12 MR. SIGLER: Okay.</p> <p>13 THE VIDEOGRAPHER: Okay.</p> <p>14 MR. KELLY: Off the record.</p> <p>15 THE VIDEOGRAPHER: We are going off</p> <p>16 the record. The time is 10:15.</p> <p>17 (A break was taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the</p> <p>19 record. The time is 10:36.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Welcome back, Mr. Íñiguez.</p> <p>22 A Thank you.</p>	<p style="text-align: right;">Page 71</p> <p>1 (Iniguez Exhibit 14 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Mr. Íñiguez, do you have Exhibit 14</p> <p>5 on the screen here, sir?</p> <p>6 A Can you make that bigger?</p> <p>7 Okay, I can see it now, yes.</p> <p>8 Q Okay. Do you see that this is a</p> <p>9 Notice of Deposition to Swarm Technology, sir?</p> <p>10 A Yes, I can see it.</p> <p>11 Q And have you seen this deposition</p> <p>12 notice to Swarm before?</p> <p>13 A Yes, I have.</p> <p>14 Q And did you review it in preparing for</p> <p>15 your deposition today?</p> <p>16 A Yes, I did.</p> <p>17 Q Okay. And you're appearing here today</p> <p>18 in response to this deposition notice on behalf of</p> <p>19 Swarm, right, sir?</p> <p>20 A Yes.</p> <p>21 Q All right. And you're prepared to</p> <p>22 testify on the topics in this notice here today on</p>
<p style="text-align: right;">Page 70</p> <p>1 Q Did you speak to your lawyers during</p> <p>2 the break?</p> <p>3 A We have a -- we had a conversation.</p> <p>4 Q Did you talk at all about the</p> <p>5 substance of your testimony here today?</p> <p>6 A We talk about speaking -- telling the</p> <p>7 truth, which I have been doing, by the way.</p> <p>8 Q Did you talk about anything else</p> <p>9 regarding your testimony today?</p> <p>10 A Anything about -- can you be more</p> <p>11 specific about what you're asking?</p> <p>12 Q Did you talk about any of your -- the</p> <p>13 answers that you've given today to my questions?</p> <p>14 A As far as -- as far as giving moral</p> <p>15 support, yes.</p> <p>16 Q All right, understood.</p> <p>17 Mr. Fahnert, can you please mark --</p> <p>18 pull up the next exhibit? It will be Tab L.</p> <p>19 THE REPORTER: Are we marking that as</p> <p>20 Exhibit 14?</p> <p>21 MR. SIGLER: Yes, please. I was going</p> <p>22 to ask.</p>	<p style="text-align: right;">Page 72</p> <p>1 behalf of Swarm?</p> <p>2 A Yes, I am prepared.</p> <p>3 Q Okay. All right, you can take that</p> <p>4 down, Mr. Fahnert.</p> <p>5 Mr. Íñiguez, have you ever had your</p> <p>6 deposition taken before?</p> <p>7 A A deposition before?</p> <p>8 Q Yes.</p> <p>9 A No, my first time.</p> <p>10 Q Okay. Have you ever testified in</p> <p>11 court before?</p> <p>12 A Well, one time my -- my sister went</p> <p>13 through a divorce, and my former brother-in-law,</p> <p>14 for some reason, asked me to go in as a witness,</p> <p>15 and I went there as a witness. And he represented</p> <p>16 himself; that was an interesting scenario.</p> <p>17 That was my only time in court.</p> <p>18 Q Okay. Did you do anything to prepare</p> <p>19 for the deposition today?</p> <p>20 A Well, I prepared by providing all the</p> <p>21 documentation that I was asked to produce, and I</p> <p>22 read the document so that I'm aware of the topics</p>

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<p style="text-align: right;">Page 73</p> <p>1 that we're going to discuss today.</p> <p>2 Q And did you meet with your attorneys</p> <p>3 in preparing for the deposition today?</p> <p>4 A I have met with my attorneys multiple</p> <p>5 times throughout this lawsuit.</p> <p>6 Q Did you meet with them specifically to</p> <p>7 prepare for this deposition?</p> <p>8 MR. KELLY: I'll instruct the witness</p> <p>9 not to answer to the extent that doing so would</p> <p>10 require invading the attorney-client privilege.</p> <p>11 THE WITNESS: Since I was not aware</p> <p>12 what a deposition, the only time I came across</p> <p>13 that concept was when I saw it possibly on a</p> <p>14 movie, and I needed to know what this is all</p> <p>15 about, and they instructed -- they told me how</p> <p>16 this works. That was my first one.</p> <p>17 BY MR. SIGLER:</p> <p>18 Q And it's just -- I'm just looking for</p> <p>19 a yes or no. I'm not asking about what you talked</p> <p>20 about, but did you meet with your attorneys to</p> <p>21 prepare for the deposition today?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 75</p> <p>1 many -- how much time precisely, or --</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Ballpark. How many -- how long did</p> <p>4 you meet with your attorneys on Wednesday?</p> <p>5 A Well, I have to say that we discussed</p> <p>6 multiple topics related to the --</p> <p>7 MR. KELLY: I'll instruct the witness</p> <p>8 not to answer to the extent doing so will require</p> <p>9 you to disclose the substance of attorney-client</p> <p>10 privileged information.</p> <p>11 THE WITNESS: Yes, that was</p> <p>12 attorney-client privileged information.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q All right. How long did you meet with</p> <p>15 them to prepare for this deposition specifically?</p> <p>16 MR. KELLY: Objection to form.</p> <p>17 THE WITNESS: Ballpark number, I would</p> <p>18 say a couple of hours each day.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q Okay. And -- go ahead, sir,</p> <p>21 I'm sorry. Were you going to add to that?</p> <p>22 A Yeah. And we -- we went through the</p>
<p style="text-align: right;">Page 74</p> <p>1 Q All right. When did you meet with</p> <p>2 them?</p> <p>3 A I met with them -- you're asking for a</p> <p>4 specific date --</p> <p>5 Q Yes.</p> <p>6 A -- or just in general?</p> <p>7 I met them more than once this week.</p> <p>8 Q Okay. What days this week?</p> <p>9 MR. KELLY: Objection, form.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q What days did you meet with them this</p> <p>12 week, sir?</p> <p>13 A I'm thinking. I'm thinking.</p> <p>14 Q Okay.</p> <p>15 A If today is Friday, then it would have</p> <p>16 been Wednesday, and then Thursday.</p> <p>17 Q How long did you meet with them on</p> <p>18 Monday?</p> <p>19 A How much time we --</p> <p>20 MR. KELLY: Object to the form of that</p> <p>21 question.</p> <p>22 THE WITNESS: Are you asking for how</p>	<p style="text-align: right;">Page 76</p> <p>1 documentation that we produced, and I basically --</p> <p>2 throughout this preparation, I was providing them</p> <p>3 with all the documentation that you have</p> <p>4 requested.</p> <p>5 Q Did you go through all the documents</p> <p>6 that Swarm produced with your attorneys?</p> <p>7 MR. KELLY: Objection to form.</p> <p>8 THE WITNESS: Those are 1,300 pages</p> <p>9 that we produced, and I am familiarized with all</p> <p>10 the documentation, but I cannot quote you on every</p> <p>11 single line that each document contains.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Sure, and I understand that, sir.</p> <p>14 Aside from your attorneys, did you</p> <p>15 speak with anyone else to prepare for the</p> <p>16 deposition today?</p> <p>17 A No.</p> <p>18 Q Do you know a gentleman named</p> <p>19 John Fisher?</p> <p>20 A Yes.</p> <p>21 Q Who's Mr. Fisher?</p> <p>22 A Mr. Fisher is a patent</p>

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<p style="text-align: right;">Page 77</p> <p>1 representative. In the letters, his name is --</p> <p>2 basically he's representing Swarm in order to seek</p> <p>3 this opportunity to consider licensing with those</p> <p>4 companies in California. So that was his role.</p> <p>5 Q Did you speak with Mr. Fisher in</p> <p>6 preparing for the deposition today?</p> <p>7 A No, I did not.</p> <p>8 Q Okay. Where is Swarm located, sir?</p> <p>9 A It is located in Mesa, Arizona.</p> <p>10 Q When was Swarm founded?</p> <p>11 A The precise date I don't have on the</p> <p>12 top of my head, but when they filed for the LLC,</p> <p>13 between 2013 or 2014. I would have to go back and</p> <p>14 check the actual date.</p> <p>15 Q But you think it's in 2013 or 2014,</p> <p>16 sir?</p> <p>17 A Around those years, yes.</p> <p>18 Q Okay. Does Swarm have any employees?</p> <p>19 A No.</p> <p>20 Q Does Swarm have officers?</p> <p>21 A Basically the company is owned by my</p> <p>22 wife and myself, that's it.</p>	<p style="text-align: right;">Page 79</p> <p>1 product in the future?</p> <p>2 MR. KELLY: Object to the form.</p> <p>3 THE WITNESS: That is included in the</p> <p>4 pitch deck, yes. The idea is to fabricate Swarm</p> <p>5 intelligent works, fabricate those in Arizona, and</p> <p>6 then sell them from Arizona.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And where would you sell those</p> <p>9 products? Well, strike that, bad question.</p> <p>10 You said you'd be selling those from</p> <p>11 Arizona, right, sir?</p> <p>12 A That is -- that is the -- that is the</p> <p>13 plan. This is the reason why, again, the business</p> <p>14 plan is saying that we're asking for funding, so</p> <p>15 that we can fabricate and produce those products.</p> <p>16 Q Okay. Will Swarm be offering to sell</p> <p>17 those products to anyone in California?</p> <p>18 MR. KELLY: Object to form.</p> <p>19 THE WITNESS: Swarm will be offering</p> <p>20 those products to any person in the world, not</p> <p>21 specific to California.</p> <p>22</p>
<p style="text-align: right;">Page 78</p> <p>1 Q Okay. Is Swarm's only business --</p> <p>2 strike that.</p> <p>3 Is Swarm's only current business</p> <p>4 licensing its patents?</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 THE WITNESS: No, and this is clearly</p> <p>7 stated and explained in the business plan that you</p> <p>8 have. The business plan goes extensively over the</p> <p>9 development of robotics and how to apply Swarm</p> <p>10 intelligence into robots, including drones and</p> <p>11 rovers, and that is a big portion of the business.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Okay. Has Swarm ever sold any</p> <p>14 products?</p> <p>15 A No.</p> <p>16 Q Has Swarm ever made any revenue?</p> <p>17 A As included -- as is stated in the</p> <p>18 business plan, Swarm is a pre-revenue company.</p> <p>19 Q So Swarm hasn't realized any revenue</p> <p>20 to this point?</p> <p>21 A Correct, there's no revenue.</p> <p>22 Q Okay. Does Swarm have plans to sell</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. So anyone anywhere in the</p> <p>3 United States, right?</p> <p>4 MR. KELLY: Object to form.</p> <p>5 THE WITNESS: And not only</p> <p>6 United States. They could be located anywhere --</p> <p>7 anywhere in the world.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Okay. And that would include</p> <p>10 California, right, sir?</p> <p>11 A Yes.</p> <p>12 Q All right. Has Swarm ever licensed</p> <p>13 any of its patents to anyone?</p> <p>14 A No. Swarm does not -- does not have</p> <p>15 any licenses with anyone, inside California or</p> <p>16 outside California, and that includes it has no</p> <p>17 exclusive licenses, and no non-exclusive licenses.</p> <p>18 Q Have you ever traveled to California?</p> <p>19 A Yes, I have.</p> <p>20 Q Approximately how many times?</p> <p>21 A How often?</p> <p>22 Q I'm sorry, sir. I said about how many</p>

20 (Pages 77 to 80)

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<p style="text-align: right;">Page 81</p> <p>1 times have you traveled to California?</p> <p>2 MR. KELLY: Object to the form.</p> <p>3 THE WITNESS: Well, I have taken my</p> <p>4 kids to Disneyland a couple of times, SeaWorld.</p> <p>5 In the early 2000s, my wife and I made</p> <p>6 multiple trips to Los Angeles. We were working as</p> <p>7 the executive couple for the American counter, and</p> <p>8 we went there once a month.</p> <p>9 And then later on, I traveled to trade</p> <p>10 shows. To be more specific, three trade shows.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Okay. Have you ever traveled to</p> <p>13 California on behalf of Swarm?</p> <p>14 A Only when I went to those three trade</p> <p>15 shows.</p> <p>16 Q Okay. And those three trade shows</p> <p>17 were all in Santa Clara, California, right, sir?</p> <p>18 A Correct.</p> <p>19 Q Has Swarm ever paid anyone to help</p> <p>20 with licensing its patents?</p> <p>21 A No. No, we never paid anybody to --</p> <p>22 are you asking about hiring somebody as an</p>	<p style="text-align: right;">Page 83</p> <p>1 privileged information.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Well, did Mr. Fisher have a -- well,</p> <p>4 strike that.</p> <p>5 If Swarm obtained a patent license --</p> <p>6 or excuse me.</p> <p>7 If Swarm licensed its patents to</p> <p>8 another company through Mr. Fisher's efforts and</p> <p>9 Swarm was compensated, was Mr. Fisher entitled to</p> <p>10 a part of that compensation?</p> <p>11 MR. KELLY: Object to the form, and</p> <p>12 object to the extent it requires the witness to</p> <p>13 divulge the substance of attorney-client</p> <p>14 privileged communications.</p> <p>15 THE WITNESS: That is -- again, Swarm</p> <p>16 has never licensed any patents, and that includes</p> <p>17 the effort attempted by Mr. Fisher.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q What did -- well, strike that.</p> <p>20 I mean, I disagree that the nature of</p> <p>21 this relationship is in any way protected by the</p> <p>22 attorney-client privilege, and I'll note that on</p>
<p style="text-align: right;">Page 82</p> <p>1 employee? Can you repeat that question? I want</p> <p>2 to make sure that I got it correct.</p> <p>3 Q Has Swarm ever paid anyone to help its</p> <p>4 efforts to license its patents?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: No, we have not. We</p> <p>7 have never paid anybody.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Did Swarm pay Mr. Fisher for his</p> <p>10 services in helping to license Swarm's patents?</p> <p>11 MR. KELLY: Same objection.</p> <p>12 THE WITNESS: No, it did not.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Okay. But Mr. Fisher did, at least</p> <p>15 for a time, represent Swarm; is that correct, sir?</p> <p>16 A Swarm -- Mr. Fisher dedicated time for</p> <p>17 this, but I did not -- or Swarm did not pay</p> <p>18 anything to Mr. Fisher.</p> <p>19 Q How was he compensated for his time</p> <p>20 during that work for Swarm?</p> <p>21 MR. SIGLER: Object to the form.</p> <p>22 THE WITNESS: That is attorney-client</p>	<p style="text-align: right;">Page 84</p> <p>1 the record.</p> <p>2 How was Swarm compensating Mr. Fisher</p> <p>3 for his time sending correspondence to potential</p> <p>4 licensees?</p> <p>5 MR. KELLY: Same objection.</p> <p>6 THE WITNESS: Same response. It is</p> <p>7 attorney-client privileged information.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Did Mr. Fisher have any interest in --</p> <p>10 well, strike that.</p> <p>11 Was Mr. Fisher entitled -- well, I</p> <p>12 already asked that, so strike that. All right.</p> <p>13 Well, I'm just going to disagree on</p> <p>14 the record about this, and we can talk about it</p> <p>15 later and I'll reserve my rights, but if</p> <p>16 Mr. Fisher had any kind of stake or incentive to</p> <p>17 get these patents licensed, including to entities</p> <p>18 in California, I don't think that's protected by</p> <p>19 the attorney-client privilege.</p> <p>20 MR. KELLY: Noted.</p> <p>21 MR. SIGLER: So we can talk about that</p> <p>22 later.</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Does Swarm have any investors right</p> <p>3 now?</p> <p>4 A Swarm does not have any investors. It</p> <p>5 was -- it is -- it was our hope to find an</p> <p>6 investor, and at this point, Swarm is a</p> <p>7 self-funded company. The only owners in Swarm are</p> <p>8 my wife and myself.</p> <p>9 Q Has Swarm ever had any investors</p> <p>10 besides you and your wife?</p> <p>11 MR. KELLY: Objection.</p> <p>12 THE WITNESS: There are no -- there</p> <p>13 are no investors in Swarm.</p> <p>14 As indicated in my business plan, we</p> <p>15 have family members that are contributing to</p> <p>16 helping Swarm, but they are not investors in</p> <p>17 Swarm.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Has anyone ever questioned the</p> <p>20 validity of Swarm's patents?</p> <p>21 MR. KELLY: Objection, form.</p> <p>22 THE WITNESS: Has anybody questioned</p>	<p style="text-align: right;">Page 87</p> <p>1 that.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Okay. Mr. -- well, strike that.</p> <p>4 Mr. Íñiguez, Swarm had some</p> <p>5 communications with Juniper before this lawsuit,</p> <p>6 right?</p> <p>7 A Correct.</p> <p>8 Q Mr. Fahnert, can you please put Tab VV</p> <p>9 on the screen, and I believe that should be</p> <p>10 Exhibit 15.</p> <p>11 (Iniguez Exhibit 15 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Do you see Exhibit 15 on your screen,</p> <p>15 Mr. Íñiguez?</p> <p>16 A Yes, I can see it.</p> <p>17 Q All right. Do you see that it's a</p> <p>18 July 16, 2018, letter, sir?</p> <p>19 A Yes.</p> <p>20 Q And it's addressed to Bikash Koley,</p> <p>21 the CTO of Juniper Networks in Sunnyvale,</p> <p>22 California, right, sir?</p>
<p style="text-align: right;">Page 86</p> <p>1 the validity? You mean going to the patent office</p> <p>2 and filing paperwork for that purpose?</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Has anyone ever sent Swarm a letter,</p> <p>5 for example, stating that they don't believe</p> <p>6 Swarm's patents are valid?</p> <p>7 MR. KELLY: Object to the form.</p> <p>8 THE WITNESS: I want to make sure that</p> <p>9 I understood the question.</p> <p>10 Are you talking about a</p> <p>11 company providing some type of documentation</p> <p>12 showing those patents are invalid?</p> <p>13 BY MR. SIGLER:</p> <p>14 Q It's broader than that.</p> <p>15 Has any company ever said to Swarm or</p> <p>16 its representatives we don't think your patents</p> <p>17 are valid?</p> <p>18 MR. KELLY: Object to form.</p> <p>19 THE WITNESS: To the best of my</p> <p>20 recollection, I don't believe they have.</p> <p>21 I would have to see the document in</p> <p>22 front of me in order to be able to comment on</p>	<p style="text-align: right;">Page 88</p> <p>1 A Correct.</p> <p>2 Q And this is another letter from your</p> <p>3 attorney, Mr. Kelly, right, sir?</p> <p>4 A Correct.</p> <p>5 Q And like the other letters on this</p> <p>6 same date that we looked at earlier today, this</p> <p>7 one also highlights a licensing opportunity,</p> <p>8 right, sir?</p> <p>9 A Correct.</p> <p>10 Q All right. And if we could go to the</p> <p>11 second page, please, Mr. Fahnert.</p> <p>12 Do you see, sir, that this letter,</p> <p>13 like the other ones we looked at previously,</p> <p>14 states that Swarm would welcome the opportunity to</p> <p>15 discuss exclusive or non-exclusive patent</p> <p>16 licensing arrangements with you?</p> <p>17 A Correct.</p> <p>18 Q All right. So Swarm was -- well,</p> <p>19 strike that.</p> <p>20 Do you know if Swarm ever got a</p> <p>21 response to this letter from Juniper?</p> <p>22 A There is a -- yes, there's a response</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 from Juniper.</p> <p>2 Q In fact, sir, Swarm continued to send</p> <p>3 Juniper letters until May 2020, right?</p> <p>4 A I don't remember the exact dates, but</p> <p>5 yes, we continued to correspond.</p> <p>6 Q Okay. And in the production and the</p> <p>7 other materials that I have, I found 11 letters or</p> <p>8 emails that Swarm sent to Juniper between 2018 and</p> <p>9 2020 about licensing Swarm's patents.</p> <p>10 Does that sound about right to you?</p> <p>11 MR. KELLY: Object to form.</p> <p>12 THE WITNESS: Can you please show me</p> <p>13 that email?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Well, we're on limited time here, so I</p> <p>16 just wanted to see if that sounded right to you.</p> <p>17 I also found five letters or emails</p> <p>18 from Juniper to Swarm during that time. Does that</p> <p>19 sound about right to you?</p> <p>20 MR. KELLY: Object to the form.</p> <p>21 THE WITNESS: We corresponded through</p> <p>22 email. I don't remember the exact number of</p>	<p style="text-align: right;">Page 91</p> <p>1 then that was precisely what we're asking. We</p> <p>2 wanted to have a communication on that topic, and</p> <p>3 that was it.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Well, Juniper responded by telling you</p> <p>6 they weren't interested in the license, right,</p> <p>7 sir?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: I would have to see the</p> <p>10 letter that you're referring to in order to make a</p> <p>11 comment.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q All right, we'll get to that.</p> <p>14 Swarm sent Juniper some charts mapping</p> <p>15 Swarm's patent claims to Juniper's products,</p> <p>16 right?</p> <p>17 A Basically -- are you referring to the</p> <p>18 claim chart when you say "mapping"?</p> <p>19 Can you repeat the question?</p> <p>20 Q Sure. Did Swarm send Juniper claim</p> <p>21 charts?</p> <p>22 A Correct.</p>
<p style="text-align: right;">Page 90</p> <p>1 letters or emails, but those emails are in your</p> <p>2 possession at this point.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q All right. And are you aware that</p> <p>5 Mr. Fisher had a call with someone from Juniper at</p> <p>6 one point, sir?</p> <p>7 A I believe so.</p> <p>8 Q Were you on that call?</p> <p>9 A I was not.</p> <p>10 Q Did Mr. Fisher tell you about what</p> <p>11 happened on that call?</p> <p>12 A We had multiple conversations -- I had</p> <p>13 multiple conversations with Mr. Fisher, but I</p> <p>14 don't remember every detail of those</p> <p>15 conversations.</p> <p>16 Q Why did Swarm continue to send letters</p> <p>17 to Juniper for almost two years?</p> <p>18 MR. KELLY: Object to the form.</p> <p>19 THE WITNESS: Why? Because as stated</p> <p>20 in the initial letter, the initial letter says</p> <p>21 this is an opportunity for a possible patent or</p> <p>22 licensing opportunity. Juniper responded, and</p>	<p style="text-align: right;">Page 92</p> <p>1 Q Why did Swarm send those claim charts</p> <p>2 to Juniper?</p> <p>3 MR. KELLY: Object to form.</p> <p>4 THE WITNESS: The claim chart showed a</p> <p>5 mapping between the claims included -- in this</p> <p>6 case, one claim included in the patent -- and the</p> <p>7 mapping of the product. That's the purpose of the</p> <p>8 claim chart; it's a mapping.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q All right. Did Swarm believe that</p> <p>11 Juniper infringes Swarm's patents?</p> <p>12 MR. KELLY: Objection to the form of</p> <p>13 the question.</p> <p>14 THE WITNESS: Again, as indicated in</p> <p>15 the cover letter that included that claim chart,</p> <p>16 the cover letter said that this is an opportunity,</p> <p>17 licensing opportunity, and then we provided the</p> <p>18 claim chart.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q And did Swarm believe that Juniper's</p> <p>21 products infringed Swarm's patents?</p> <p>22 MR. KELLY: Object to the form.</p>

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<p style="text-align: right;">Page 93</p> <p>1 THE WITNESS: Again, we're -- we're</p> <p>2 presenting Juniper an opportunity, and the claim</p> <p>3 chart shows this -- this opportunity showing a</p> <p>4 mapping between the claims and a product. That's</p> <p>5 all it is, is to show that there's a mapping.</p> <p>6 BY MR. SIGLER:</p> <p>7 Q It's to show that the elements of the</p> <p>8 claim are the same as what you see in the Juniper</p> <p>9 products, right, sir?</p> <p>10 MR. KELLY: Object to form.</p> <p>11 THE WITNESS: It basically shows</p> <p>12 that -- again, the patent describes an invention</p> <p>13 claim, and then we're showing the mapping with the</p> <p>14 product that in this case Juniper has.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q And Swarm has filed a lawsuit against</p> <p>17 Amazon in Arizona, right, sir?</p> <p>18 A That is correct.</p> <p>19 Q And in preparation for that lawsuit,</p> <p>20 did Swarm create claim charts mapping Amazon's</p> <p>21 products to Swarm's patent claims?</p> <p>22 MR. KELLY: Object to the form.</p>	<p style="text-align: right;">Page 95</p> <p>1 MR. KELLY: Object to form.</p> <p>2 THE WITNESS: I am -- I created the</p> <p>3 initial draft of the claim chart. Again, I am not</p> <p>4 an attorney. I provide the initial information,</p> <p>5 and I get help from my attorney using</p> <p>6 attorney-client privilege, and then produce the</p> <p>7 document.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q And Swarm also sent Juniper a draft</p> <p>10 license agreement under which Juniper would</p> <p>11 license Swarm's patents, right?</p> <p>12 A At one point, we sent a draft license</p> <p>13 agreement.</p> <p>14 Q Has Swarm ever sent a draft license</p> <p>15 agreement to anyone else?</p> <p>16 MR. KELLY: Object to form.</p> <p>17 THE WITNESS: Swarm does not have</p> <p>18 any -- for the record, does not have any executed</p> <p>19 license agreements -- excuse me (witness clearing</p> <p>20 throat) -- does not have any executed license</p> <p>21 agreements.</p> <p>22 We sent -- provided the documentations</p>
<p style="text-align: right;">Page 94</p> <p>1 THE WITNESS: It is important not to</p> <p>2 take a document out of context.</p> <p>3 In the case of the claim chart that I</p> <p>4 provided to Juniper, I'm showing a mapping of the</p> <p>5 product, and that claim chart includes a cover</p> <p>6 letter saying that this is not an accusation of</p> <p>7 infringement. It is basically just presenting an</p> <p>8 opportunity.</p> <p>9 In the case, as you mentioned, of AWS,</p> <p>10 the claim chart has a different context.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q And that wasn't my question, sir. My</p> <p>13 question was a far more simple and narrow one.</p> <p>14 Did Swarm create claim charts mapping</p> <p>15 Amazon's products to Swarm's patent claims in</p> <p>16 preparing for filing its Complaint against Amazon?</p> <p>17 A I don't have the exact document in</p> <p>18 front of me of that AWS Complaint, but that is</p> <p>19 public record. If you show me the document, then</p> <p>20 I should be able to explain it to you.</p> <p>21 Q Did you create the claim charts that</p> <p>22 were sent to Juniper?</p>	<p style="text-align: right;">Page 96</p> <p>1 that we produced. We have a draft license</p> <p>2 agreement that we sent to Phi Robotics, and that</p> <p>3 was never executed. That's a company located in</p> <p>4 Mumbai, India.</p> <p>5 BY MR. SIGLER:</p> <p>6 Q Okay. Other than Juniper and</p> <p>7 Phi Robotics, has Swarm ever sent a draft license</p> <p>8 agreement to anyone else?</p> <p>9 MR. KELLY: Object to the form.</p> <p>10 THE WITNESS: Those are the only</p> <p>11 license agreements that we have ever sent.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Okay. So the only license -- the only</p> <p>14 draft license agreement that you ever sent to</p> <p>15 anyone in the United States went to Juniper in</p> <p>16 California, right, sir?</p> <p>17 A Yes.</p> <p>18 MR. KELLY: Object to the form.</p> <p>19 THE WITNESS: That is correct.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Fahnert, can you please put Tab O</p> <p>22 on the screen? First, let's identify this as</p>

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<p style="text-align: right;">Page 97</p> <p>1 Exhibit 16 for the record, please.</p> <p>2 (Iniguez Exhibit 16 was marked</p> <p>3 for identification.)</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Mr. Íñiguez, have you seen this email</p> <p>6 before?</p> <p>7 A Yes, I have.</p> <p>8 Q It's an email from your</p> <p>9 representative, Mr. Fisher, right?</p> <p>10 A Correct.</p> <p>11 Q And it's to Dave Saunders at Juniper,</p> <p>12 right?</p> <p>13 A Correct.</p> <p>14 Q And it's also addressed to you, right?</p> <p>15 A Correct.</p> <p>16 Q And this is the email where Swarm</p> <p>17 attaches the draft licensing agreement that it</p> <p>18 sent to Juniper, right?</p> <p>19 A Right. Can you scroll down to the</p> <p>20 bottom where -- so that I can see better?</p> <p>21 Q Sure.</p> <p>22 A Okay. Is there another -- there's</p>	<p style="text-align: right;">Page 99</p> <p>1 Agreement?</p> <p>2 MR. KELLY: Object to form.</p> <p>3 THE WITNESS: Can you scroll -- can</p> <p>4 you zoom in a little bit?</p> <p>5 This document was provided by my</p> <p>6 attorney.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Which attorney?</p> <p>9 A Michael Kelly.</p> <p>10 Q Okay. And then Mr. Fisher provided it</p> <p>11 to Juniper, right?</p> <p>12 MR. KELLY: Object to form.</p> <p>13 THE WITNESS: Correct.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q All right, we can take that off the</p> <p>16 screen.</p> <p>17 Let's put up Tab WW, please, which</p> <p>18 will be Exhibit 17.</p> <p>19 (Iniguez Exhibit 17 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. SIGLER:</p> <p>22 Q Mr. Íñiguez, do you see that this is</p>
<p style="text-align: right;">Page 98</p> <p>1 another page to this email, correct?</p> <p>2 Q Yes. And I'm only going to ask you</p> <p>3 about a couple of pages of these. For now, on the</p> <p>4 first page, there's a heading that says "Answer:"</p> <p>5 if we could focus on that.</p> <p>6 And do you see, sir, that it says,</p> <p>7 "Answer: In the interest of simplification, the</p> <p>8 claim chart originally provided"?</p> <p>9 Do you see that?</p> <p>10 A Yes, I can see that.</p> <p>11 Q Okay. So this is referring to a claim</p> <p>12 chart that was previously sent by Swarm to</p> <p>13 Juniper, right?</p> <p>14 A Correct.</p> <p>15 Q All right. If we could go to the</p> <p>16 attached license agreement, which is at, I believe</p> <p>17 it's the fifth page of this document. The Bates</p> <p>18 number ends in 282.</p> <p>19 Do you see that on your screen,</p> <p>20 Mr. Íñiguez?</p> <p>21 A Yes, I see it.</p> <p>22 Q All right. Who drafted this License</p>	<p style="text-align: right;">Page 100</p> <p>1 another email from Mr. Fisher?</p> <p>2 A Yes, I see it.</p> <p>3 Q And it's dated November 6, 2019,</p> <p>4 right?</p> <p>5 A Yes.</p> <p>6 Q And it's to Mr. Saunders at Juniper,</p> <p>7 right?</p> <p>8 A Correct.</p> <p>9 Q And you are copied on this email,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q All right. And if we could go --</p> <p>13 well, you see it there on the screen actually</p> <p>14 already. You can put that back up, Mr. Fahnert.</p> <p>15 I'm sorry.</p> <p>16 Mr. Fisher opens his email by saying,</p> <p>17 "Dear Mr. Saunders, I was surprised and</p> <p>18 disappointed by your email of October 24 saying</p> <p>19 Juniper is not interested in taking a license at</p> <p>20 this time." Do you see that, sir?</p> <p>21 A Yes, I see it.</p> <p>22 Q So Juniper had told Swarm prior to</p>

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<p style="text-align: right;">Page 101</p> <p>1 this email that Juniper wasn't interested in</p> <p>2 taking a license to Swarm's patents, right?</p> <p>3 MR. KELLY: Object to the form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. SIGLER:</p> <p>6 Q All right. And in the second</p> <p>7 paragraph it says in the second sentence, "Having</p> <p>8 answered all of your questions, it appears that</p> <p>9 you have failed to express any position that would</p> <p>10 prevail in a Markman hearing."</p> <p>11 Do you see that, sir?</p> <p>12 A Yes, I see it.</p> <p>13 Q Do you know what a Markman hearing is?</p> <p>14 A Yes, I have an idea of what it is.</p> <p>15 I've never been involved in one. I just have</p> <p>16 general knowledge of what that is.</p> <p>17 Q And what's your general knowledge of</p> <p>18 what a Markman hearing is?</p> <p>19 A The terms in a specific claim are</p> <p>20 looked into the definitions, what they mean, and</p> <p>21 then they see if that mapping from the product</p> <p>22 that is mapping to. That is my general knowledge.</p>	<p style="text-align: right;">Page 103</p> <p>1 the bottom. It starts with "although."</p> <p>2 Do you see that paragraph, sir?</p> <p>3 A Yes, I see it.</p> <p>4 Q All right. And the first sentence</p> <p>5 says, "Although you have said Juniper does not</p> <p>6 require a license, I have to disagree."</p> <p>7 Do you see that, sir?</p> <p>8 A I see it, yes.</p> <p>9 Q So Swarm told Juniper that it required</p> <p>10 a license to Swarm's patents, right?</p> <p>11 A Can you please repeat that question?</p> <p>12 Q Sure. So Mr. Fisher, on behalf of</p> <p>13 Swarm, is telling Juniper here that Juniper</p> <p>14 requires a license to Swarm's patents, right?</p> <p>15 MR. KELLY: Object to form.</p> <p>16 THE WITNESS: Well, what it says over</p> <p>17 there is what you just read. It says, "Although</p> <p>18 you have said Juniper does not require a license,</p> <p>19 I have to disagree." That's what it says.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. So Mr. Fisher is stating that</p> <p>22 Juniper does require a license to Swarm's patents,</p>
<p style="text-align: right;">Page 102</p> <p>1 Q And that's a hearing that takes place</p> <p>2 in court, right?</p> <p>3 A That is my understanding.</p> <p>4 Q And that's a hearing that occurs if a</p> <p>5 company sues another company for patent</p> <p>6 infringement, right?</p> <p>7 A As a person who's not an attorney, I</p> <p>8 don't know. I'm sure they could -- it could be</p> <p>9 the case, but I don't know if that is for every</p> <p>10 type of Markman hearing. Again, I don't know.</p> <p>11 Q Okay, but it's your understanding that</p> <p>12 that would be a hearing that would take place in a</p> <p>13 lawsuit, right, sir?</p> <p>14 A I don't know about a lawsuit. I know</p> <p>15 it's a hearing that takes place in court, but I</p> <p>16 don't know if it's related to a lawsuit.</p> <p>17 Q Okay. So here Mr. Fisher is referring</p> <p>18 to a hearing that would take place in court,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q All right. And if we could scroll</p> <p>22 down to the -- I think it's the third paragraph at</p>	<p style="text-align: right;">Page 104</p> <p>1 right?</p> <p>2 MR. KELLY: Form.</p> <p>3 THE WITNESS: Well, what it says, it</p> <p>4 is stating, "Although you have said Juniper does</p> <p>5 not require a license, I have to disagree."</p> <p>6 That's what it says.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q So Juniper told Swarm that it doesn't</p> <p>9 require a license, right?</p> <p>10 A Well, again, as mentioned here,</p> <p>11 Mr. Fisher is disagreeing with Juniper.</p> <p>12 Q And Juniper said we don't require a</p> <p>13 license to Swarm's patents, right?</p> <p>14 A Yes.</p> <p>15 Q And Mr. Fisher, on behalf of Swarm,</p> <p>16 said no, you're wrong, correct?</p> <p>17 MR. KELLY: Object to the form.</p> <p>18 THE WITNESS: Mr. Fisher is</p> <p>19 disagreeing, as we can see in the letter.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. Well, we'll have the Court take</p> <p>22 a look at it, and it can come to its own</p>

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<p>1 grammatical understanding of what's going on</p> <p>2 there.</p> <p>3 Did Swarm at this time believe that</p> <p>4 Juniper required a license to its patents?</p> <p>5 A Again --</p> <p>6 MR. KELLY: Object to form.</p> <p>7 THE WITNESS: Again, it's important to</p> <p>8 look back to the initial intention.</p> <p>9 Swarm offered, in this case Juniper,</p> <p>10 an opportunity to license. It has never been the</p> <p>11 intention of going into court. Short of us just</p> <p>12 seeking to license this patent, it never intended</p> <p>13 to sue anyone, and that letter is not saying that</p> <p>14 it's going to be suing anyone.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q I just want to know, at this time, did</p> <p>17 Swarm believe that Juniper was infringing Swarm's</p> <p>18 patents?</p> <p>19 MR. KELLY: Same objection.</p> <p>20 THE WITNESS: Please repeat that</p> <p>21 question.</p> <p>22</p>	<p>1 MR. KELLY: This is five times, sir.</p> <p>2 MR. SIGLER: No, he hasn't. He's said</p> <p>3 what he wants you guys to tell him to say.</p> <p>4 I'm just asking because, you know, my</p> <p>5 client -- my client might face down a willful</p> <p>6 infringement allegation like Amazon is facing down</p> <p>7 right now where you all rely on letters like this</p> <p>8 to say, hey, you were on notice of our patents,</p> <p>9 and you're willfully infringing.</p> <p>10 So I want to know, at this time in</p> <p>11 2019, did Swarm believe that Juniper was</p> <p>12 infringing Swarm's patents?</p> <p>13 MR. KELLY: Object to the form.</p> <p>14 THE WITNESS: Again, the claim chart</p> <p>15 served the purpose of mapping the claim with a</p> <p>16 product. That's all we're doing, and we're</p> <p>17 presenting with a licensing opportunity.</p> <p>18 It has never been the intention of</p> <p>19 Swarm to sue Juniper, and the facts speak for</p> <p>20 themselves. There's no legal -- Swarm never</p> <p>21 threatened Juniper to sue, and we never did</p> <p>22 anything, and eventually Juniper sued Swarm.</p>
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<p>1 BY MR. SIGLER:</p> <p>2 Q It's a yes-or-no -- yes-or-no answer.</p> <p>3 At this time, did Swarm believe that</p> <p>4 Juniper was infringing Swarm's patents?</p> <p>5 MR. KELLY: Objection.</p> <p>6 THE WITNESS: It doesn't say</p> <p>7 "infringing" in that letter. Again, we go back to</p> <p>8 my original statement.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q I'm not asking you about the letter.</p> <p>11 I'm asking you, at this time, did Swarm believe</p> <p>12 that Juniper was infringing Swarm's patents?</p> <p>13 MR. KELLY: Object to form.</p> <p>14 THE WITNESS: We never used the term</p> <p>15 "infringement."</p> <p>16 BY MR. SIGLER:</p> <p>17 Q But did Swarm believe that Juniper was</p> <p>18 infringing Swarm's patents?</p> <p>19 MR. KELLY: Counsel --</p> <p>20 MR. SIGLER: He's not answering my</p> <p>21 question, Mr. Kelly. I'm just looking for an</p> <p>22 answer to my question.</p>	<p>1 BY MR. SIGLER:</p> <p>2 Q And earlier today we saw some</p> <p>3 correspondence with Apple, right, sir?</p> <p>4 A Earlier today? Can you repeat that</p> <p>5 question?</p> <p>6 Q Sure. Earlier today we looked at some</p> <p>7 letters that Swarm sent to Apple, right?</p> <p>8 A Correct.</p> <p>9 Q All right. And in one of those</p> <p>10 letters that came back from Apple, Apple said to</p> <p>11 Swarm we're not interested in licensing your</p> <p>12 patents, right, sir?</p> <p>13 A Correct.</p> <p>14 Q And I believe you told me that --</p> <p>15 well, strike that.</p> <p>16 And Swarm didn't reply to that letter,</p> <p>17 right?</p> <p>18 A We weren't sent a letter?</p> <p>19 Can you repeat that question?</p> <p>20 Q Sure. Swarm didn't reply to Apple's</p> <p>21 letter saying that Apple wasn't interested in</p> <p>22 licensing Swarm's patents, right?</p>

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<p style="text-align: right;">Page 109</p> <p>1 MR. KELLY: Object to form.</p> <p>2 THE WITNESS: Correct, we did not</p> <p>3 respond.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q And you told me earlier today that's</p> <p>6 because Apple said they weren't interested in</p> <p>7 taking a license, right?</p> <p>8 MR. KELLY: Object to form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q And here, sir, Juniper has told Swarm</p> <p>12 that they're not interested in taking a license,</p> <p>13 right?</p> <p>14 A Basically, as you can see on that</p> <p>15 letter, Juniper provided information related to</p> <p>16 the claim chart, and then we responded to their</p> <p>17 concerns on the claim chart.</p> <p>18 That is the nature of the</p> <p>19 correspondence. We're responding to concerns</p> <p>20 raised by Juniper.</p> <p>21 Q And Juniper had said to Swarm that</p> <p>22 Juniper wasn't interested in taking a license to</p>	<p style="text-align: right;">Page 111</p> <p>1 MR. KELLY: Object to form.</p> <p>2 THE WITNESS: Juniper responded, as</p> <p>3 you show in the previous letter, with some</p> <p>4 definition of terms, and then we explain those</p> <p>5 terms.</p> <p>6 BY MR. SIGLER:</p> <p>7 Q If Juniper said it wasn't interested</p> <p>8 in taking a license to Swarm's patents, why did</p> <p>9 Swarm continue to send Juniper communications?</p> <p>10 MR. KELLY: Object to form.</p> <p>11 THE WITNESS: After -- after this</p> <p>12 letter?</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Yes.</p> <p>15 A At one point, Swarm was granted</p> <p>16 another patent, and we presented again Juniper the</p> <p>17 opportunity with a bigger, better -- bigger</p> <p>18 portfolio of patents.</p> <p>19 Q You did that because you wanted to</p> <p>20 make sure Juniper was on notice of that patent,</p> <p>21 right, sir?</p> <p>22 MR. KELLY: Object to form.</p>
<p style="text-align: right;">Page 110</p> <p>1 Swarm's patents, right?</p> <p>2 A At one point -- I have to go back and</p> <p>3 see the letter to see where that is conveyed.</p> <p>4 Q Let's scroll up to the beginning of</p> <p>5 this letter again, please, Mr. Fahnert. And I</p> <p>6 read this to you before, but I'll do it again.</p> <p>7 The opening of the letter says, "I was</p> <p>8 surprised and disappointed by your email of</p> <p>9 October 24 saying Juniper is not interested in</p> <p>10 taking a license at this time."</p> <p>11 Juniper told Swarm it was not</p> <p>12 interested in taking a license, right, sir?</p> <p>13 MR. KELLY: Object to the form.</p> <p>14 THE WITNESS: Yes. We can also see</p> <p>15 there that it says we were continuing the</p> <p>16 good faith discussions. Those were good faith</p> <p>17 discussions looking for an opportunity to explore</p> <p>18 this opportunity. That's it.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q But Swarm could have chosen to not</p> <p>21 reply to Juniper's letter saying Juniper wasn't</p> <p>22 interested, right?</p>	<p style="text-align: right;">Page 112</p> <p>1 THE WITNESS: Since we had a previous</p> <p>2 relationship, we thought it was opportunity to</p> <p>3 present the opportunity one more time.</p> <p>4 MR. SIGLER: All right, we can take</p> <p>5 down that document, Mr. Fahnert. Let's move on to</p> <p>6 another one.</p> <p>7 Let's please bring up Tab P, and</p> <p>8 I think that would be Exhibit 17?</p> <p>9 THE REPORTER: 18.</p> <p>10 MR. SIGLER: Exhibit 18, apologies.</p> <p>11 (Iniguez Exhibit 18 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. SIGLER:</p> <p>14 Q All right, here we have Exhibit 18 on</p> <p>15 your screen, Mr. Íñiguez. And Mr. Fahnert, if you</p> <p>16 could go back to the first page real quick. I</p> <p>17 just wanted to make clear what this is.</p> <p>18 We filed this as an exhibit earlier in</p> <p>19 the case, that's why it has this exhibit page on</p> <p>20 it, but I wanted to ask you about the letter that</p> <p>21 starts at the second page, please, so if we could</p> <p>22 go there. Thank you, Mr. Fahnert.</p>

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<p style="text-align: right;">Page 113</p> <p>1 Do you see, Mr. Íñiguez, that this is</p> <p>2 an April 16, 2020, letter?</p> <p>3 A Correct.</p> <p>4 Q And it is to two people at Apstra,</p> <p>5 Inc., right?</p> <p>6 A Correct.</p> <p>7 Q Okay. And they are Mansour Karam and</p> <p>8 Sasha Ratkovic, right?</p> <p>9 A Correct.</p> <p>10 Q And it's addressed to them in</p> <p>11 Menlo Park, California, right?</p> <p>12 A Yes.</p> <p>13 Q Okay. And focusing in on the first</p> <p>14 paragraph of the body there, if we could,</p> <p>15 Mr. Fahner -- actually, can we scroll down just a</p> <p>16 little bit more?</p> <p>17 Do you see there, Mr. Íñiguez, that</p> <p>18 this is a letter from Mr. Fisher?</p> <p>19 A That is correct.</p> <p>20 Q And he's Swarm's IP licensing</p> <p>21 consultant at this time, right?</p> <p>22 MR. KELLY: Object to the form.</p>	<p style="text-align: right;">Page 115</p> <p>1 not responded to any of those letters."</p> <p>2 Do you see that?</p> <p>3 A Yes, I do.</p> <p>4 Q So Apstra hadn't responded to</p> <p>5 Mr. Fisher's prior three letters, right?</p> <p>6 A Correct.</p> <p>7 Q Okay. A little further down in that</p> <p>8 paragraph, we see here that it says, "I have</p> <p>9 included with this letter a claim chart that shows</p> <p>10 the relationship between the '275 patent and</p> <p>11 Apstra products." Do you see that, sir?</p> <p>12 A Yes.</p> <p>13 Q All right. So this letter from Swarm</p> <p>14 to Apstra includes a claim chart showing the</p> <p>15 relationship between the '275 patent and Apstra</p> <p>16 products, right?</p> <p>17 A Correct.</p> <p>18 Q And the next sentence says, "The '275</p> <p>19 claim chart and the earlier provided '004 claim</p> <p>20 chart use Apstra's own documents to identify claim</p> <p>21 elements in Apstra products."</p> <p>22 Do you see that, sir?</p>
<p style="text-align: right;">Page 114</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q And you're copied on this letter,</p> <p>4 right, sir?</p> <p>5 A Yes.</p> <p>6 Q All right. And now if we could scroll</p> <p>7 up to the first paragraph, please.</p> <p>8 And the letter opens by saying, "I</p> <p>9 have written to you on three previous occasions to</p> <p>10 bring to your attention the relationship between</p> <p>11 Apstra products and technology developed and</p> <p>12 patented by Swarm Technology (as claimed,</p> <p>13 for example, in Swarm's US Patent 9,852,004)."</p> <p>14 Do you see that, sir?</p> <p>15 A Yes, I do.</p> <p>16 Q All right. So Mr. Fisher -- well,</p> <p>17 strike that.</p> <p>18 Based on this letter, this is the</p> <p>19 fourth letter Mr. Fisher has sent to Apstra,</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q And the next sentence says, "You have</p>	<p style="text-align: right;">Page 116</p> <p>1 A Yes, I do.</p> <p>2 Q So based on this, prior to this</p> <p>3 letter, Swarm had sent a claim chart to Apstra on</p> <p>4 the Swarm '004 patent, right, sir?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And at this time, sir, did Swarm</p> <p>9 believe that Apstra was infringing Swarm's</p> <p>10 patents?</p> <p>11 MR. KELLY: Objection, form.</p> <p>12 THE WITNESS: As indicated earlier,</p> <p>13 the claim chart provided a relationship between</p> <p>14 the patent and the product. That's all we have</p> <p>15 provided.</p> <p>16 And the letters that we sent said the</p> <p>17 same thing, that we're offering an opportunity for</p> <p>18 licensing.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q So if Apstra got these claim charts</p> <p>21 and they concluded that Swarm was accusing them of</p> <p>22 infringing Swarm's patents, they would have been</p>

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<p style="text-align: right;">Page 117</p> <p>1 mistaken, right?</p> <p>2 MR. KELLY: Object to the form.</p> <p>3 THE WITNESS: Are you asking me to say</p> <p>4 what Apstra thought about those letters? I'm not</p> <p>5 sure about the question. Can you repeat the</p> <p>6 question?</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Sure. So Apstra received these claim</p> <p>9 charts from Swarm, right?</p> <p>10 A Yes.</p> <p>11 Q And if the people at Apstra saw those</p> <p>12 claim charts and thought to themselves Swarm is</p> <p>13 accusing us of infringing its patents, that would</p> <p>14 have been wrong, right?</p> <p>15 MR. KELLY: Object to the form.</p> <p>16 THE WITNESS: We never -- the letter</p> <p>17 never accused Apstra. Again, it is just</p> <p>18 presenting an opportunity. It's showing a</p> <p>19 relationship between the claim and the product.</p> <p>20 That's all what it is.</p> <p>21 BY MR. SIGLER:</p> <p>22 Q Did -- before Swarm sued Amazon, did</p>	<p style="text-align: right;">Page 119</p> <p>1 seeing claim charts previous to the lawsuit.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Okay. Swarm had some communications</p> <p>4 with Cisco about licensing Swarm's patents, right?</p> <p>5 A Correct.</p> <p>6 Q And Swarm sent Cisco a letter offering</p> <p>7 to license Swarm's patents in July 2018, right?</p> <p>8 A Correct.</p> <p>9 Q And Swarm sent Cisco claim charts</p> <p>10 mapping Swarm's patents to Cisco's products,</p> <p>11 right?</p> <p>12 A Correct.</p> <p>13 Q Who drafted those claim charts?</p> <p>14 MR. KELLY: Object to form.</p> <p>15 THE WITNESS: Again, it's same as</p> <p>16 before. I took the initial information, and then</p> <p>17 conveyed the information to my attorney, and then</p> <p>18 we eventually came up with this final product,</p> <p>19 which is the claim chart.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. And actually backing up for a</p> <p>22 moment, let's go back to Apstra for a second. I</p>
<p style="text-align: right;">Page 118</p> <p>1 Swarm create claim charts mapping Amazon products</p> <p>2 to Swarm's patent claims?</p> <p>3 MR. KELLY: Object to form.</p> <p>4 THE WITNESS: Before Amazon -- can you</p> <p>5 repeat that question? I want to make sure that I</p> <p>6 get it.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Sure. Before Swarm sued Amazon, did</p> <p>9 Swarm create claim charts matching up Amazon's</p> <p>10 products to Swarm's claims?</p> <p>11 A I'm thinking.</p> <p>12 I don't recall having an official</p> <p>13 claim chart. I get -- I take notes all the time,</p> <p>14 but from my notes into an official claim chart, I</p> <p>15 don't remember.</p> <p>16 Q Did Swarm ever send Amazon claim</p> <p>17 charts before it sued them?</p> <p>18 MR. KELLY: Object to form.</p> <p>19 THE WITNESS: I'm thinking.</p> <p>20 No, I don't recall doing that. And</p> <p>21 everything we have, we have provided in those</p> <p>22 documents that we gave you, and I don't recall</p>	<p style="text-align: right;">Page 120</p> <p>1 forgot to ask a question there.</p> <p>2 Did Apstra ever respond to this letter</p> <p>3 from Mr. Fisher?</p> <p>4 A No. As stated in the letter, they did</p> <p>5 not respond.</p> <p>6 Q Did Apstra respond to any of the</p> <p>7 letters that Swarm sent them?</p> <p>8 A No. As far as I remember, no, they</p> <p>9 have not -- they did not respond.</p> <p>10 Q Okay. All right, let's shift back to</p> <p>11 Cisco now.</p> <p>12 In the correspondence with Cisco, they</p> <p>13 provided prior art to Swarm's patents, right?</p> <p>14 A Correct.</p> <p>15 Q And Cisco questioned the validity of</p> <p>16 Swarm's patents, right?</p> <p>17 MR. KELLY: Object to form.</p> <p>18 THE WITNESS: Well, they provided --</p> <p>19 as you mentioned, they provided prior art, and</p> <p>20 then we responded to that prior art. That is the</p> <p>21 nature of the conversations that we had with</p> <p>22 Cisco.</p>

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<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. So to your recollection, Cisco</p> <p>3 never said that it thought Swarm's patents were</p> <p>4 invalid; is that correct?</p> <p>5 MR. KELLY: Objection.</p> <p>6 THE WITNESS: I would have to go and</p> <p>7 revise all the documentation in order to look for</p> <p>8 that term that you are referring to.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q Do you understand what "invalidity"</p> <p>11 means in the patent context?</p> <p>12 A I understand the concept.</p> <p>13 Q And what's that concept?</p> <p>14 A There's a procedure that somebody</p> <p>15 raises to the United States Patent Office, and</p> <p>16 then at the end, it determines that a specific</p> <p>17 patent may not be valid.</p> <p>18 To be more clear or specific, they go</p> <p>19 after the claims, not necessarily the patent</p> <p>20 itself.</p> <p>21 Q And do you understand that,</p> <p>22 for example, a defendant in a patent infringement</p>	<p>1 email, right, sir?</p> <p>2 A Yes.</p> <p>3 Q And it's from Mr. Fisher, right?</p> <p>4 A Correct.</p> <p>5 Q And it is to Theo Foster of Haynes and</p> <p>6 Boone, right?</p> <p>7 A Yes.</p> <p>8 Q And do you recognize Mr. Foster as an</p> <p>9 attorney working for Cisco, sir?</p> <p>10 A Yes, I do.</p> <p>11 Q All right. And you are copied on this</p> <p>12 email, right?</p> <p>13 A Correct.</p> <p>14 Q And Mr. Fisher says, "I have attached</p> <p>15 a letter in response to your letter of October 11,</p> <p>16 2019." Do you see that, sir?</p> <p>17 A Yes.</p> <p>18 Q All right, let's take a look at that</p> <p>19 letter. If we could please go to the second page</p> <p>20 of this document, Exhibit 19, and -- well, let me</p> <p>21 start with, Mr. Íñiguez, do you recognize this as</p> <p>22 the October 29th, 2019, letter referred to in the</p>
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<p>1 lawsuit can argue that the patent is invalid?</p> <p>2 A There's a procedure for that. I have</p> <p>3 never been involved with that, and I don't have</p> <p>4 any more information to be able to tell you about</p> <p>5 how that works.</p> <p>6 Q Has Swarm ever had any calls with</p> <p>7 Cisco or Cisco's attorneys about Swarm's patents?</p> <p>8 MR. KELLY: Object to form.</p> <p>9 THE WITNESS: It is my understanding</p> <p>10 that all communication was done through email.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Okay, let's take a look at one of</p> <p>13 those emails. Mr. Fahnert, could you please put</p> <p>14 Tab Q on the screen, which will be Exhibit 19, I</p> <p>15 believe.</p> <p>16 (Íñiguez Exhibit 19 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. SIGLER:</p> <p>19 Q All right, do you see this email on</p> <p>20 the screen that's Exhibit 19, Mr. Íñiguez?</p> <p>21 A Yes, I see it.</p> <p>22 Q And this is an October 29, 2019,</p>	<p>1 email?</p> <p>2 A Yes, I do.</p> <p>3 Q All right. And if we could focus on</p> <p>4 the paragraph that says "First:" please.</p> <p>5 A I see it.</p> <p>6 Q Okay. Thank you, sir.</p> <p>7 It says, "You again took issue with</p> <p>8 Swarm's identification of 'controller' in the</p> <p>9 Cisco device. This issue can be summarized by</p> <p>10 asking whether column A below on the left, which</p> <p>11 sets forth the '004 claim language is equivalent</p> <p>12 to column B on the right which describes the Cisco</p> <p>13 device as described in Cisco references."</p> <p>14 Do you see that, sir?</p> <p>15 A Yes, I see it.</p> <p>16 Q All right. Do you know what</p> <p>17 Mr. Fisher meant here when he said "equivalent"?</p> <p>18 MR. KELLY: Objection, form.</p> <p>19 THE WITNESS: Well, it's a mapping</p> <p>20 of -- mapping between what the claim language is</p> <p>21 saying and a specific product.</p> <p>22</p>

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<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. So he's saying that the claim</p> <p>3 language is the same as what's shown in the Cisco</p> <p>4 device, right?</p> <p>5 MR. KELLY: Object to form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And below that is a claim chart,</p> <p>9 right, sir?</p> <p>10 A Okay, I can see it.</p> <p>11 What is the question?</p> <p>12 Q That's a claim chart, right, sir?</p> <p>13 A This is -- correct, this is a portion</p> <p>14 of a claim chart.</p> <p>15 Q All right. And if we could go further</p> <p>16 into this document, it's the page ending with 224,</p> <p>17 please. And if we could go to the top of the</p> <p>18 screen, that paragraph at the top of the screen,</p> <p>19 please.</p> <p>20 And there, sir, in the final sentence</p> <p>21 of that paragraph, do you see that it says, "A</p> <p>22 claim chart showing the relationship of the</p>	<p>1 Q All right. And there's an attachment.</p> <p>2 It says "Cisco response to Swarm's 10-29-2019</p> <p>3 Letter," right?</p> <p>4 A Yes.</p> <p>5 Q All right. And Mr. Fisher says,</p> <p>6 "Latest from Cisco. I haven't studied it in</p> <p>7 detail yet." Do you see that, sir?</p> <p>8 A Correct.</p> <p>9 Q So Mr. Fisher was keeping you apprised</p> <p>10 on the communications with Cisco at this time,</p> <p>11 right?</p> <p>12 A That is correct.</p> <p>13 Q All right. And he goes on to say,</p> <p>14 "They have not cited any new art."</p> <p>15 Do you see that, sir?</p> <p>16 A Yes.</p> <p>17 Q And he goes on to say, "I have your</p> <p>18 new '777 claim chart, but am still working my way</p> <p>19 through the references."</p> <p>20 Do you see that, sir?</p> <p>21 A Yes, I see it.</p> <p>22 Q And in referring to your new '777</p>
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<p>1 '777 patent to Cisco product is appended below."</p> <p>2 A Yes, I see.</p> <p>3 Q So Mr. Fisher is providing a claim</p> <p>4 chart mapping the claims of the '777 patent to</p> <p>5 Cisco's product, right?</p> <p>6 A That is correct.</p> <p>7 Q All right, let's take a look at</p> <p>8 another document regarding Cisco. Mr. Fahnert,</p> <p>9 could you please put Tab R on the screen? And</p> <p>10 this will be Exhibit 20.</p> <p>11 (Iniguez Exhibit 20 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Is that on the screen, sir?</p> <p>15 A Yes, I can see it.</p> <p>16 Q All right. And let's start with the</p> <p>17 email at the top here, sir. Do you see it's an</p> <p>18 email from Mr. Fisher to you?</p> <p>19 A Yes, I can see it.</p> <p>20 Q All right. And it's dated</p> <p>21 November 27th, 2019, right?</p> <p>22 A Yes.</p>	<p>1 claim chart, is he referring to a claim chart for</p> <p>2 that patent that you created?</p> <p>3 MR. KELLY: Object to form.</p> <p>4 THE WITNESS: Correct. This is a</p> <p>5 draft that I provided to John, and then we</p> <p>6 reviewed it together, and then by the end we get a</p> <p>7 final product.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Okay. And so at this time, you were</p> <p>10 aware that Cisco had cited prior art to</p> <p>11 Mr. Fisher, right?</p> <p>12 MR. KELLY: Object to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Let's push ahead in the document to</p> <p>16 the page that ends in 208, please. Thank you,</p> <p>17 Mr. Fahnert. And let's focus on the portion of</p> <p>18 this that has the heading, it says "Invalidity."</p> <p>19 A Okay, I see it.</p> <p>20 Q Do you see that, sir? All right.</p> <p>21 And that paragraph starts with the</p> <p>22 sentence, "As you requested, we previously</p>

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<p style="text-align: right;">Page 129</p> <p>1 provided a copy of the prior art article</p> <p>2 'SETI@Home- Massively Distributed Computing for</p> <p>3 SETI' for Swarm's review."</p> <p>4 Do you see that, sir?</p> <p>5 A That is correct.</p> <p>6 Q All right. And in this letter from --</p> <p>7 well, let me back up for a moment. I apologize.</p> <p>8 Let's go back to the page that ends in 206,</p> <p>9 please.</p> <p>10 Do you see, sir, that this is a letter</p> <p>11 from -- or excuse me, a letter to Mr. Fisher?</p> <p>12 A Yes, I can see it.</p> <p>13 Q And it's dated November 27, 2019,</p> <p>14 right?</p> <p>15 A Correct.</p> <p>16 Q And it's from Mr. Foster, who is the</p> <p>17 lawyer for Cisco, right?</p> <p>18 A Yes.</p> <p>19 Q All right. Now, let's go back to</p> <p>20 page 208, invalidity discussion.</p> <p>21 Okay, so back here on page 208 of</p> <p>22 Exhibit 20, Mr. Íñiguez, there's a paragraph with</p>	<p style="text-align: right;">Page 131</p> <p>1 correct.</p> <p>2 Q And do you understand the concept in</p> <p>3 patent law of obviousness?</p> <p>4 A I understand. Can you explain that to</p> <p>5 me to make sure I got it correct?</p> <p>6 Q Let me ask you a more basic question.</p> <p>7 Is it your understanding here in this</p> <p>8 letter, sir, that Cisco is expressing their</p> <p>9 opinion that Swarm's patents are invalid?</p> <p>10 MR. KELLY: Object to form.</p> <p>11 THE WITNESS: Yes, I can see that.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Okay. All right.</p> <p>14 Do you recall how Swarm responded to</p> <p>15 that opinion from Cisco?</p> <p>16 A Do I recall responding to this letter?</p> <p>17 Is that what you're asking? Can you repeat the</p> <p>18 question, please?</p> <p>19 Q Sure. Do you know if Swarm responded</p> <p>20 to this letter?</p> <p>21 A Yes, we did.</p> <p>22 Q Okay. And do you recall what Swarm</p>
<p style="text-align: right;">Page 130</p> <p>1 a heading that says "Invalidity," right?</p> <p>2 A Correct.</p> <p>3 Q And we talked a little bit about the</p> <p>4 first sentence there, but let's go on to the</p> <p>5 second sentence in that paragraph, which says, "We</p> <p>6 believe that SETI@Home is highly relevant to the</p> <p>7 asserted claims of both the '004 and the '777</p> <p>8 patents." Do you see that, sir?</p> <p>9 A Okay, let me review this. Give me</p> <p>10 just one second. (Witness reviewing document.)</p> <p>11 Yes, I can see it.</p> <p>12 Q And the next sentence says, "Together</p> <p>13 with the background knowledge of a person of</p> <p>14 ordinary skill in the art, the article teaches or</p> <p>15 renders obvious the asserted claims as Swarm</p> <p>16 interprets them."</p> <p>17 Do you see that, sir?</p> <p>18 A I see it, yes.</p> <p>19 Q All right. So here Cisco is telling</p> <p>20 Swarm that Cisco believes the claims of Swarm's</p> <p>21 patents are obvious, right, sir?</p> <p>22 A Yeah, that's an opinion from Cisco,</p>	<p style="text-align: right;">Page 132</p> <p>1 said about Cisco's opinion that the patents are</p> <p>2 invalid?</p> <p>3 A I don't recall the exact content of</p> <p>4 the letter, but do you have it in your possession?</p> <p>5 If you showed that to me, then that would be very</p> <p>6 helpful.</p> <p>7 Q Sure, we can do that.</p> <p>8 Mr. Fahnert, let's put Tab S on the</p> <p>9 screen, please, which will be Exhibit 21.</p> <p>10 (Iniguez Exhibit 21 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. SIGLER:</p> <p>13 Q All right, you see here, Mr. Íñiguez,</p> <p>14 this is an email from Mr. Fisher, right?</p> <p>15 A Yes.</p> <p>16 Q And it's to Mr. Foster, Cisco's</p> <p>17 attorney, right?</p> <p>18 A Correct.</p> <p>19 Q And you're copied, right?</p> <p>20 A Yes.</p> <p>21 Q And it's dated December 13, 2019,</p> <p>22 right?</p>

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<p style="text-align: right;">Page 133</p> <p>1 A Correct.</p> <p>2 Q And Mr. Fisher says to Mr. Foster that</p> <p>3 he has attached a letter responding to Cisco's</p> <p>4 November 27, 2019, letter, right?</p> <p>5 A That is correct.</p> <p>6 Q And that's the letter we just looked</p> <p>7 at, right, sir, in Exhibit 20?</p> <p>8 A Yes.</p> <p>9 Q All right, let's go to the second page</p> <p>10 of this document, please.</p> <p>11 And do you recognize this,</p> <p>12 Mr. Íñiguez, as the December 13th, 2019, letter to</p> <p>13 Mr. Foster from Mr. Fisher?</p> <p>14 A Yes.</p> <p>15 Q And Mr. Fahnert, could you please take</p> <p>16 us to the last page of this document, which ends</p> <p>17 in 201? Let's focus in on the second to last</p> <p>18 paragraph, please, that starts with "furthermore."</p> <p>19 And here Mr. Fisher, on behalf of</p> <p>20 Swarm says, "Furthermore, the SETI reference fails</p> <p>21 to disclose the claim requirement 'on a</p> <p>22 plug-and-play basis' of the '004 patent."</p>	<p style="text-align: right;">Page 135</p> <p>1 document, please show me the document so that I</p> <p>2 can elaborate.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Did Swarm ever tell Cisco that it</p> <p>5 agreed that any of Swarm's patent claims are</p> <p>6 invalid?</p> <p>7 MR. KELLY: Objection, form.</p> <p>8 THE WITNESS: Are you asking if Cisco</p> <p>9 ever told Swarm if the patents were invalid? I'm</p> <p>10 not understanding -- I don't understand the</p> <p>11 question.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Yeah, my question is the other way</p> <p>14 around. Did Swarm ever tell Cisco that Swarm</p> <p>15 agreed with Cisco's opinion that Swarm's patents</p> <p>16 are invalid?</p> <p>17 A No.</p> <p>18 Q Okay. Did Swarm ever tell Juniper</p> <p>19 that Juniper didn't require a license to Swarm's</p> <p>20 patents?</p> <p>21 MR. KELLY: Object to the form.</p> <p>22 THE WITNESS: I'm trying to see.</p>
<p style="text-align: right;">Page 134</p> <p>1 Do you see that, sir?</p> <p>2 A Yes, I see it.</p> <p>3 Q So here Mr. Fisher is expressing</p> <p>4 Swarm's opinion that the '004 patent isn't</p> <p>5 invalid, right?</p> <p>6 A Basically, yes, it is responding to</p> <p>7 Cisco's concern.</p> <p>8 Q Okay. Did Swarm ever tell Cisco that</p> <p>9 Swarm didn't believe that Cisco needed a license</p> <p>10 to Swarm's patents?</p> <p>11 MR. KELLY: Object to the form.</p> <p>12 THE WITNESS: Can you please repeat</p> <p>13 that question?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Sure. Did Swarm ever tell Cisco that</p> <p>16 Cisco didn't need a license to Swarm's patents?</p> <p>17 A We --</p> <p>18 MR. KELLY: Object to the form.</p> <p>19 THE WITNESS: As mentioned before, the</p> <p>20 entire conversation is based on presenting Cisco</p> <p>21 with an opportunity to license those patents.</p> <p>22 If you're referring to a specific</p>	<p style="text-align: right;">Page 136</p> <p>1 We're offering an opportunity to --</p> <p>2 we're offering an opportunity to license those</p> <p>3 patents. Were you asking us -- can you</p> <p>4 please request -- can you please ask again so that</p> <p>5 I can understand what you're asking?</p> <p>6 BY MR. SIGLER:</p> <p>7 Q Sure. Did Swarm ever tell Juniper</p> <p>8 that Swarm agreed with Juniper's opinion that</p> <p>9 Juniper didn't require a license to Swarm's</p> <p>10 patents?</p> <p>11 MR. KELLY: Objection, form.</p> <p>12 THE WITNESS: No.</p> <p>13 MR. SIGLER: Why don't we -- it's a</p> <p>14 good spot for a break, I think, so why don't we</p> <p>15 take a break.</p> <p>16 MR. KELLY: Mr. Sigler, we just had</p> <p>17 lunch brought in. Do you mind if we take</p> <p>18 20 minutes?</p> <p>19 MR. SIGLER: No, that's fine. I was</p> <p>20 going to ask if you guys wanted to fit in lunch,</p> <p>21 given the time there. So yeah, 20, 30, minutes is</p> <p>22 fine.</p>

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<p>1 MR. KELLY: Okay, sounds great. We'll</p> <p>2 bow back in at 12:22, 3:22 your time.</p> <p>3 THE VIDEOGRAPHER: Okay, going off the</p> <p>4 record. The time is 11:53.</p> <p>5 (A break was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on</p> <p>7 record. The time is 12:37.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q All right, welcome back, Mr. Íñiguez.</p> <p>10 Mr. Fahnert, can you please put Tab T</p> <p>11 on the screen? And I believe this will be</p> <p>12 Exhibit 22.</p> <p>13 THE VIDEOGRAPHER: Correct.</p> <p>14 MR. SIGLER: Thank you, sir.</p> <p>15 (Iniguez Exhibit 22 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. SIGLER:</p> <p>18 Q All right, Mr. Íñiguez, you have</p> <p>19 Exhibit 22 on your screen there, sir?</p> <p>20 A Yes, I can see it.</p> <p>21 Q All right. And do you see that this</p> <p>22 is a letter that has a Swarm Technology logo at</p>	<p>1 demonstrates the correlation between claim 1 of</p> <p>2 the '004 patent and Arista's ZTP product, right?</p> <p>3 A Correct.</p> <p>4 Q All right. And then at the end of the</p> <p>5 letter, he in the final paragraph asks -- well,</p> <p>6 strike that. He says that Swarm would welcome the</p> <p>7 opportunity to discuss this licensing opportunity</p> <p>8 with Arista, right?</p> <p>9 A That's correct.</p> <p>10 Q All right, we can pull that one down,</p> <p>11 and let's put up Tab U, please, which will be</p> <p>12 Exhibit 23.</p> <p>13 (Iniguez Exhibit 23 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Mr. Íñiguez, do you see that this is</p> <p>17 an email from a Sean Christofferson at Arista?</p> <p>18 A Correct.</p> <p>19 Q And it's addressed to Mr. Fisher,</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q And it's dated September 12, 2019,</p>
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<p>1 the top, sir?</p> <p>2 A Correct.</p> <p>3 Q And this is another letter from</p> <p>4 Mr. Fisher, sir?</p> <p>5 A That is correct.</p> <p>6 Q And you're copied on this letter, sir?</p> <p>7 A I am, yes.</p> <p>8 Q And this letter is dated July 5th,</p> <p>9 2019, correct?</p> <p>10 A That is correct.</p> <p>11 Q And it's addressed to Jayshree Ullal</p> <p>12 and Mark Taxay at Arista Networks, right, sir?</p> <p>13 A That is correct.</p> <p>14 Q And it's addressed to them in</p> <p>15 Santa Clara, California, right?</p> <p>16 A Yes.</p> <p>17 Q Let's focus on the second paragraph,</p> <p>18 please. Do you see there in the second paragraph</p> <p>19 that Mr. Fisher indicates that he's enclosing a</p> <p>20 claim chart, sir?</p> <p>21 A That is correct.</p> <p>22 Q And he says that the chart</p>	<p>1 right?</p> <p>2 A Yes.</p> <p>3 Q And in this email, in the first</p> <p>4 sentence, sir, it says, "I write to reply to your</p> <p>5 letter of August 15, 2019 regarding an offer to</p> <p>6 license certain Swarm technology."</p> <p>7 Do you see that?</p> <p>8 A I'm trying to find the -- yeah.</p> <p>9 This is the first line?</p> <p>10 Q Yeah. He says, "I write to reply to</p> <p>11 your letter of August 15, 2019 regarding an offer</p> <p>12 to license certain Swarm technology."</p> <p>13 Do you see that, sir?</p> <p>14 A Yes, I see it.</p> <p>15 Q All right. And Mr. Christofferson</p> <p>16 goes on to say -- and as we see at the bottom of</p> <p>17 the screen here, sir, Mr. Christofferson</p> <p>18 identifies himself as the Deputy General Counsel</p> <p>19 of Arista, right?</p> <p>20 A Yes.</p> <p>21 Q And he's located in Santa Clara,</p> <p>22 California, right?</p>

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<p style="text-align: right;">Page 141</p> <p>1 A That is correct.</p> <p>2 Q All right. And going back up to the</p> <p>3 body of the letter, he continues on by saying, "We</p> <p>4 have reviewed the patents you cited, and it is not</p> <p>5 clear that they have anything to do with Arista's</p> <p>6 ZTP feature. Setting that issue aside, our ZTP</p> <p>7 feature appears to have been introduced to the</p> <p>8 market several years before the priority date of</p> <p>9 those patents."</p> <p>10 Are you familiar with the concept of a</p> <p>11 priority date, sir?</p> <p>12 A Yes, I am.</p> <p>13 Q All right. And do you understand here</p> <p>14 that Mr. Christofferson is making an argument that</p> <p>15 the Swarm Patents aren't valid, sir?</p> <p>16 MR. KELLY: Objection to the form.</p> <p>17 THE WITNESS: Let me see if I can find</p> <p>18 that word "invalid" in the letter.</p> <p>19 Give me a second.</p> <p>20 (Witness reviewing Exhibit 23.)</p> <p>21 I could not find the word "invalid."</p> <p>22</p>	<p style="text-align: right;">Page 143</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. And he closes the letter by</p> <p>3 saying, "[I'm] certainly happy to discuss further,</p> <p>4 but at this time I don't see the value of Swarm's</p> <p>5 portfolio to Arista."</p> <p>6 Do you see that, sir?</p> <p>7 A Yes, I see that.</p> <p>8 Q And do you recall Mr. Fisher responded</p> <p>9 to Mr. Christofferson?</p> <p>10 A Are you asking me if Mr. Fisher</p> <p>11 responded to that email?</p> <p>12 Q Yeah. I'll make it easy for you.</p> <p>13 Let's just look at that.</p> <p>14 Can we please put Tab V on the screen?</p> <p>15 And we'll mark it as Exhibit 23, please.</p> <p>16 THE VIDEOGRAPHER: 24.</p> <p>17 MR. SIGLER: 24, I'm sorry.</p> <p>18 (Iniguez Exhibit 24 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q All right, Mr. Íñiguez, do you see</p> <p>22 that this is an email from Mr. Fisher?</p>
<p style="text-align: right;">Page 142</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. Well, you'd agree that he's</p> <p>3 saying that Arista's ZTP feature was introduced to</p> <p>4 the market before Swarm applied for its patents,</p> <p>5 right?</p> <p>6 A That is what the letter says, correct.</p> <p>7 Q Okay. And if that were true, then</p> <p>8 Swarm's patents would be invalid, right, sir?</p> <p>9 MR. KELLY: Object to the form.</p> <p>10 THE WITNESS: Okay, can you rephrase</p> <p>11 that question? That was a very interesting</p> <p>12 question, by the way, but can you please rephrase</p> <p>13 it?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Sure. If what Mr. Christofferson was</p> <p>16 saying were true, that Arista's ZTP feature was</p> <p>17 introduced before Swarm filed for its patents,</p> <p>18 then Swarm's patents would be invalid, right?</p> <p>19 MR. KELLY: Object to the form.</p> <p>20 THE WITNESS: That is for the</p> <p>21 United States Patent Office to decide.</p> <p>22</p>	<p style="text-align: right;">Page 144</p> <p>1 A Yes, I see it.</p> <p>2 Q And it's dated May 6, 2020, right?</p> <p>3 A Yes.</p> <p>4 Q And it's regarding Swarm Technology</p> <p>5 Licensing Offer, right?</p> <p>6 A Correct.</p> <p>7 Q And it's to Mr. Christofferson of</p> <p>8 Arista, right?</p> <p>9 A That is correct.</p> <p>10 Q Okay. And you're copied on this</p> <p>11 email, correct?</p> <p>12 A Yes.</p> <p>13 Q All right. And the email indicates</p> <p>14 that two claim charts are attached, correct?</p> <p>15 A That is correct.</p> <p>16 Q And in the middle of the email,</p> <p>17 actually, there's a line that starts with "I have</p> <p>18 attached." It says, "I have attached to this</p> <p>19 email two further claim charts."</p> <p>20 Do you see that, sir?</p> <p>21 A Yes, I see it.</p> <p>22 Q Okay. So Swarm sent to Arista in</p>

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<p>1 May 2020 two additional claim charts, right, sir?</p> <p>2 A That is correct.</p> <p>3 Q All right. And in the opening line</p> <p>4 here, Mr. Fisher says that, "In an email to me on</p> <p>5 September 12, 2019 you stated that you saw no</p> <p>6 value to Arista in Swarm's patent portfolio."</p> <p>7 Do you see that, sir?</p> <p>8 A Correct.</p> <p>9 Q And then Mr. Fisher says, "Swarm</p> <p>10 disagrees with your conclusion." Right, sir?</p> <p>11 A Correct.</p> <p>12 Q All right. And Mr. Fisher closes this</p> <p>13 letter by saying, "I would like to have an</p> <p>14 opportunity to discuss such a licensing</p> <p>15 opportunity with you."</p> <p>16 Do you see that, sir?</p> <p>17 A Yes, I see it.</p> <p>18 Q Did Mr. Fisher, or any other</p> <p>19 representative of Swarm, ever talk to Arista on</p> <p>20 the phone about a licensing opportunity?</p> <p>21 MR. KELLY: Object to the form.</p> <p>22 THE WITNESS: I don't know. I don't</p>	<p>1 Q And you're copied on this letter, sir?</p> <p>2 A Yes.</p> <p>3 Q And it's addressed to the President</p> <p>4 and General Counsel of Aruba Networks in</p> <p>5 Santa Clara, California, right?</p> <p>6 A That is correct.</p> <p>7 Q That's dated July 5, 2019, right?</p> <p>8 A Yes.</p> <p>9 Q All right. And similar to the letter</p> <p>10 we looked at to Arista, this one indicates that</p> <p>11 Mr. Fisher is enclosing a copy of a claim chart</p> <p>12 correlating the '004 patent to Aruba's products,</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q Okay. And he says that Swarm would</p> <p>16 welcome the opportunity to discuss a licensing</p> <p>17 opportunity with Aruba, right?</p> <p>18 A That is correct.</p> <p>19 MR. SIGLER: Mr. Fahnert, please put</p> <p>20 Tab X on the screen, and we'll identify that as</p> <p>21 Exhibit 26.</p> <p>22</p>
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<p>1 know the answer. I don't recall that.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q You don't -- you don't remember any</p> <p>4 phone call with Arista, sir?</p> <p>5 A Arista? Is that the one that is</p> <p>6 related to HP? Can you refresh my memory?</p> <p>7 There's one --</p> <p>8 Q That's Aruba, sir.</p> <p>9 A Okay. In that case, the answer is I</p> <p>10 don't recall. The answer is no, I don't recall</p> <p>11 having any conversations with Arista.</p> <p>12 Q Okay, thank you for that, sir.</p> <p>13 Mr. Fahnert, let's put Tab W on the</p> <p>14 screen and identify that as Exhibit 25.</p> <p>15 (Iniguez Exhibit 25 was marked</p> <p>16 for identification.)</p> <p>17 THE WITNESS: I can see it.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Thank you, sir.</p> <p>20 And this is another letter from</p> <p>21 Mr. Fisher on behalf of Swarm, right?</p> <p>22 A That is correct.</p>	<p>1 (Iniguez Exhibit 26 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q And Mr. Íñiguez -- oh, I'm sorry, sir,</p> <p>5 go ahead.</p> <p>6 A Yeah, I can see it.</p> <p>7 Q All right. And you see this is a</p> <p>8 letter from Deanna Kwong of HP to Mr. Fisher?</p> <p>9 A That is correct.</p> <p>10 Q And it's dated September 5, 2019,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q And Ms. Kwong says she's writing in</p> <p>14 response to correspondence from Mr. Fisher dated</p> <p>15 July 5, 2019, and August 15, 2019, right?</p> <p>16 A That is correct.</p> <p>17 Q And at the end she says, "Please also</p> <p>18 reach out to let me know if you would like to set</p> <p>19 up a time to discuss why HPE is not interested in</p> <p>20 and does not need a license to U.S. Patent Nos;</p> <p>21 9,852,004 & 9,146,777."</p> <p>22 Do you see that, sir?</p>

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<p style="text-align: right;">Page 149</p> <p>1 A Yes, I see.</p> <p>2 Q So HPE was telling Swarm through this</p> <p>3 letter that it wasn't interested in a license to</p> <p>4 Swarm's patents, right?</p> <p>5 A That is correct.</p> <p>6 Q All right. In fact, HPE says they</p> <p>7 believed that they don't need a license to the</p> <p>8 '004 patent and '777 patents, right?</p> <p>9 A That is correct.</p> <p>10 Q Okay, we can take that down, and</p> <p>11 please, Mr. Fahnert, put up Tab Y.</p> <p>12 A Is that a question?</p> <p>13 Q No.</p> <p>14 A Oh, never mind.</p> <p>15 Q This should be Tab Y, and it will be</p> <p>16 identified as Exhibit 27.</p> <p>17 (Iniguez Exhibit 27 was marked</p> <p>18 for identification.)</p> <p>19 THE WITNESS: I can see it.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. And here, Mr. Íñiguez, we have</p> <p>22 an email chain between Ms. Kwong and Mr. Fisher,</p>	<p style="text-align: right;">Page 151</p> <p>1 applicable, essentially, what they said over</p> <p>2 there, because they were making reference to a</p> <p>3 ZTP patent -- patent. That was -- that was the</p> <p>4 entire conversation.</p> <p>5 Q Okay. So they referred to a</p> <p>6 ZTP patent, sir?</p> <p>7 A That is correct.</p> <p>8 Q And did they believe that that patent</p> <p>9 was prior art to Swarm's patents?</p> <p>10 A That was -- that was what they</p> <p>11 mentioned, correct.</p> <p>12 Q Okay. So HPE said that they believed</p> <p>13 that that patent rendered Swarm's patents invalid?</p> <p>14 A They didn't just draw the words. They</p> <p>15 simply said that they were not interested because</p> <p>16 they had a patent on their ZTP.</p> <p>17 Q Okay. And they believed that that</p> <p>18 patent was prior art, and that it was earlier than</p> <p>19 Swarm's patents, right?</p> <p>20 MR. KELLY: Objection, form.</p> <p>21 THE WITNESS: That was their opinion,</p> <p>22 correct.</p>
<p style="text-align: right;">Page 150</p> <p>1 right?</p> <p>2 A Yes.</p> <p>3 Q And in the email at the top, Ms. Kwong</p> <p>4 asks Mr. Fisher if he can be available for a call</p> <p>5 on the following day, right?</p> <p>6 A That is correct.</p> <p>7 Q All right. Did Mr. Fisher have a call</p> <p>8 with Ms. Kwong from HPE?</p> <p>9 A Yes, he did.</p> <p>10 Q Were you on that call?</p> <p>11 A Yes, I was.</p> <p>12 Q And did HPE say on the call why they</p> <p>13 believed they didn't need a license to Swarm's</p> <p>14 patents?</p> <p>15 A I don't remember the exact words they</p> <p>16 used, but essentially they said that they were not</p> <p>17 interested in the licensing opportunity.</p> <p>18 Q Did they explain why?</p> <p>19 A They explained why, yes.</p> <p>20 Can you scroll down a little bit? I</p> <p>21 want to see the context of the letter.</p> <p>22 Yeah, they said that it was not</p>	<p style="text-align: right;">Page 152</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. And did HPE say -- well, strike</p> <p>3 that.</p> <p>4 Did HPE say that they believed that</p> <p>5 their products didn't match Swarm's patent claims?</p> <p>6 MR. KELLY: Object to the form.</p> <p>7 THE WITNESS: They did not get into</p> <p>8 that level of specifics. They simply said we're</p> <p>9 not interested because they had a ZTP patent.</p> <p>10 It was a brief conversation.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q About how long did it last?</p> <p>13 A I would say between 5 and 10 minutes</p> <p>14 perhaps.</p> <p>15 Q Okay. And after that conversation in</p> <p>16 2019 with HPE, has Swarm had any other</p> <p>17 communications with HPE?</p> <p>18 A Not that I am aware of. With this, we</p> <p>19 provided the email, but from the top of my head, I</p> <p>20 don't remember having other conversations with</p> <p>21 HPE.</p> <p>22 Q Okay. You can take that exhibit down,</p>

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<p>1 Mr. Fahnert.</p> <p>2 Are you familiar the company called</p> <p>3 RPX, Mr. Íñiguez?</p> <p>4 A Yes, I am.</p> <p>5 Q Who's RPX?</p> <p>6 A It is a company that contacted</p> <p>7 John Fisher with the possibility of buying the</p> <p>8 license from -- licenses from Swarm.</p> <p>9 And it is my understanding, based on</p> <p>10 their website, that they buy licenses -- or no,</p> <p>11 they buy patents, and then they offer some type of</p> <p>12 licensing to different companies. That's the</p> <p>13 business model.</p> <p>14 Q How did they contact Mr. Fisher?</p> <p>15 A That's a very interesting question,</p> <p>16 because we asked him who -- who told us [sic]</p> <p>17 about us, and they said that it was confidential.</p> <p>18 Q Did RPX --</p> <p>19 A I'm sorry.</p> <p>20 Q Go ahead.</p> <p>21 A Oh, somebody told us to contact us,</p> <p>22 and we don't know who that company is.</p>	<p>1 is "MUTUAL NONDISCLOSURE AGREEMENT," right?</p> <p>2 A Correct.</p> <p>3 Q And it says that the Agreement is made</p> <p>4 and entered into as of January 20th, 2020, right,</p> <p>5 sir?</p> <p>6 A Yes.</p> <p>7 Q Between RPX, with its principal place</p> <p>8 of business in San Francisco, right, sir?</p> <p>9 A That is correct.</p> <p>10 Q And Swarm, correct, sir?</p> <p>11 A Correct.</p> <p>12 Q All right. Is this an agreement that</p> <p>13 RPX provided to Swarm?</p> <p>14 A I do not recall who provided the</p> <p>15 agreement. I would need to ask John Fisher to</p> <p>16 refresh my memory.</p> <p>17 Q And if we could take a look at the</p> <p>18 first numbered paragraph that says "Purpose."</p> <p>19 It says there, "The parties wish to</p> <p>20 explore a business opportunity of mutual</p> <p>21 interest." Do you see that, sir?</p> <p>22 A Yes, I see.</p>
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<p>1 Q Okay. Did RPX contact Mr. Fisher by</p> <p>2 email?</p> <p>3 A That I'm not sure. I don't recall.</p> <p>4 It could have been email or phone. I do not know.</p> <p>5 MR. SIGLER: Mr. Fahnert, can you</p> <p>6 please put Tab BB on the screen, and we'll</p> <p>7 identify this as Exhibit 28.</p> <p>8 (Iniguez Exhibit 28 was marked</p> <p>9 for identification.)</p> <p>10 BY MR. SIGLER:</p> <p>11 Q And Mr. Íñiguez, there's an exhibit</p> <p>12 letter on here because this is a document that was</p> <p>13 previously filed in this case as an exhibit</p> <p>14 attached to a brief, that's why that's there.</p> <p>15 So if we could please go to the second</p> <p>16 page of the document, Mr. Fahnert, and if we could</p> <p>17 blow up the opening paragraph and title, please.</p> <p>18 Do you recall a Mutual Nondisclosure</p> <p>19 Agreement that Swarm entered with RPX,</p> <p>20 Mr. Íñiguez?</p> <p>21 A That is correct.</p> <p>22 Q Okay. And the title of this document</p>	<p>1 Q What was that business opportunity of</p> <p>2 mutual interest?</p> <p>3 A As I mentioned before, RPX contacted</p> <p>4 Swarm with the possibility of buying Swarm's</p> <p>5 patents.</p> <p>6 Q Did RPX make an offer to buy Swarm's</p> <p>7 patents?</p> <p>8 A John and RPX had a conversation. I</p> <p>9 was not there. And I know they talked about it,</p> <p>10 and at the end, John said that it was not a</p> <p>11 serious proposal, and that was the end of it.</p> <p>12 Q Okay. So Mr. Fisher had a discussion</p> <p>13 with RPX about a possible sale, right?</p> <p>14 A The discussion was about -- correct,</p> <p>15 it was about RPX being interested in buying</p> <p>16 Swarm's patents.</p> <p>17 Q Okay. Mr. Fahnert, can you take us to</p> <p>18 the final page of this document and the</p> <p>19 "Miscellaneous" section, please.</p> <p>20 Do you recall this part of the</p> <p>21 agreement, Mr. Íñiguez?</p> <p>22 A Give me just one second to read this.</p>

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<p>1 Yes.</p> <p>2 Q Okay. And you signed this agreement,</p> <p>3 right, sir?</p> <p>4 A Yes, I did.</p> <p>5 Q And through this section here, the</p> <p>6 Miscellaneous section, you agreed on behalf of</p> <p>7 Swarm that any actions arising out of this</p> <p>8 agreement would be heard in San Francisco, right?</p> <p>9 A That is correct.</p> <p>10 Q All right. Had Swarm entered any</p> <p>11 other agreements stating that disputes under the</p> <p>12 agreement will be heard in California?</p> <p>13 A It went from my memory.</p> <p>14 Give me just a second.</p> <p>15 If we had NDAs, we have disclosed</p> <p>16 those to you. On the top of my head, I don't</p> <p>17 remember, but perhaps you're going to help me.</p> <p>18 Q Well, the versions that I got are</p> <p>19 redacted, so I can't help you, but we'll get to</p> <p>20 that.</p> <p>21 All right, let's go to -- we can take</p> <p>22 that off the screen, please, Mr. Fahnert, and</p>	<p>1 right?</p> <p>2 A Correct.</p> <p>3 Q All right. And it shows there that it</p> <p>4 attaches a document called "Question 3."</p> <p>5 Do you see that?</p> <p>6 A Yes, I see that.</p> <p>7 Q Do you recall what's in that</p> <p>8 Question 3 document?</p> <p>9 A I do not remember this from top of my</p> <p>10 head. I know that the content is confidential.</p> <p>11 Q Why is it confidential?</p> <p>12 MR. KELLY: Object to the form.</p> <p>13 THE WITNESS: Because it's a company</p> <p>14 trade secret.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q All right, let's take a look at the</p> <p>17 third page of this document that ends in 317.</p> <p>18 And Mr. Íñiguez, is this the</p> <p>19 Question 3 PDF that was attached to the email we</p> <p>20 were just looking at?</p> <p>21 A Correct.</p> <p>22 Q And it says at the top "Question 3,</p>
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<p>1 let's go to Tab Z, please. And what exhibit</p> <p>2 number will this be?</p> <p>3 THE VIDEOGRAPHER: 29.</p> <p>4 (Iniguez Exhibit 29 was marked</p> <p>5 for identification.)</p> <p>6 BY MR. SIGLER:</p> <p>7 Q Okay, we're looking at Exhibit 29.</p> <p>8 Do you have that on the screen there?</p> <p>9 A I see.</p> <p>10 Q Yeah, and if we could actually pull</p> <p>11 back out so Mr. Íñiguez can see the whole thing.</p> <p>12 Sir, this is a chain of emails between</p> <p>13 Mr. Fisher and Ryan Hanneken of RPX.</p> <p>14 Do you see that, sir?</p> <p>15 A Yes, I see.</p> <p>16 Q And you are BCC'd on the top email,</p> <p>17 right, sir?</p> <p>18 A Correct.</p> <p>19 Q And that top email is from Mr. Fisher</p> <p>20 to Mr. Hanneken, right?</p> <p>21 A That is correct.</p> <p>22 Q And it's dated January 26, 2020,</p>	<p>1 Financial Consideration," right?</p> <p>2 A Correct.</p> <p>3 Q All right. And then the entire thing</p> <p>4 is covered up by a big black box that says</p> <p>5 "Redacted," right?</p> <p>6 A That is correct.</p> <p>7 Q All right. So you understand that</p> <p>8 means I can't see what's in there, right?</p> <p>9 A That is correct.</p> <p>10 Q All right. So what is stated in this</p> <p>11 financial considerations document, sir?</p> <p>12 A Again, this is company confidential</p> <p>13 information. It's trade secret.</p> <p>14 Q And do you understand that there's a</p> <p>15 protective order entered in this case, sir, that</p> <p>16 protects trade secret, proprietary, confidential</p> <p>17 information from being disclosed anywhere outside</p> <p>18 this case?</p> <p>19 MR. KELLY: Object to the form.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Can you tell me generally what this</p> <p>22 redacted paragraph discusses?</p>

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<p style="text-align: right;">Page 161</p> <p>1 A You know, it speaks about financial 2 consideration of the value of Swarm Patents. 3 Q Okay. So this is a document that was 4 provided by Mr. Fisher to RPX, right? 5 A That is correct. 6 Q And it discusses Swarm's view of the 7 value of its patent portfolio, right? 8 A Correct. 9 Q And it was provided to RPX as part of 10 the discussions between Swarm and RPX about 11 RPX possibly buying Swarm's patents, right? 12 A It was part of our 13 Non-Disclosure Agreement discussion. 14 Q Okay, so that wasn't exactly my 15 question. I just want to clarify. 16 This was provided by Swarm to 17 RPX during the negotiations with RPX about a 18 possible purchase of Swarm's patents, right? 19 A It was provided during the 20 conversations that we interchanged through email. 21 Q Okay. And if we could go back to 22 first page of this exhibit, please, do you see</p>	<p style="text-align: right;">Page 163</p> <p>1 that -- all the communications that we had between 2 RPX and Swarm, we have provided. If there is one, 3 then you should have it. I cannot recall from the 4 top of my head. 5 Q Okay. Do you recall if Mr. -- because 6 I didn't get an email from RPX to Mr. Fisher 7 asking for this information; that's why I'm 8 curious about it. 9 So do you know if Mr. Hanneken asked 10 for this information over the phone to Mr. Fisher? 11 MR. KELLY: Object to the form. 12 THE WITNESS: This is the part that I 13 don't remember. 14 BY MR. SIGLER: 15 Q Okay. All right, looking at this 16 email, the part that's labeled 4, it says "I have 17 attached." Do you see that, sir? 18 A Yes, I see that. 19 Q And Mr. Fisher indicates that he's 20 attached claim charts illustrating the application 21 of claim 1 of the '777 patent and '004 patent to 22 products of Cisco, right?</p>
<p style="text-align: right;">Page 162</p> <p>1 there -- let's go to the email at the bottom, 2 please, and this is an email from Mr. Fisher to 3 Mr. Hanneken at RPX, right? 4 A That is correct. 5 Q All right. And he says that he is 6 sending this email to answer some of the items 7 that RPX requested, right? 8 A That is correct. 9 Q Then he says, quote, "The 'ballpark 10 price guidance,'" end quote, "will follow," right? 11 A Correct. 12 Q And that's referring to the financial 13 consideration information we saw in the attached 14 document, right? 15 A Correct. 16 Q So that's ballpark price guidance to 17 RPX about what Swarm might be willing to sell its 18 patents for, right? 19 A Correct. 20 Q Okay. This email from Mr. Fisher, is 21 he responding to an email from Mr. Hanneken? 22 A I don't know. Everything that we had</p>	<p style="text-align: right;">Page 164</p> <p>1 A That is correct. 2 Q All right. So Mr. Fisher sent 3 Mr. Hanneken at RPX copies of claim charts about 4 Cisco products, right? 5 A That is correct. 6 Q Did Mr. Fisher send -- besides the 7 claim charts and the Question 3 Financial 8 Considerations redacted document, did Mr. Fisher 9 send Mr. Hanneken or RPX any other documents? 10 A As far as I know, this is what he 11 sent. 12 Q All right. And did Mr. Fisher have a 13 phone call with Mr. Hanneken after this? 14 A I know they spoke on the phone. I 15 don't know if that happened before or after, but I 16 know they spoke on the phone. 17 Q Were you on that phone call? 18 A I was not. 19 Q All right. Let's bring up the next 20 exhibit, which will be Tab AA, please, and that 21 will be Exhibit 30, I believe. 22</p>

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<p style="text-align: right;">Page 165</p> <p>1 (Iniguez Exhibit 30 was marked 2 for identification.) 3 BY MR. SIGLER: 4 Q Do you see, Mr. Íñiguez, this is an 5 email from Mr. Fisher to Mr. Hanneken at RPX? 6 A Yes, I see that. 7 Q And it's dated January 28th, 2020, 8 right, sir? 9 A Yes, I see it. 10 Q It's a couple days after the emails we 11 just looked at, right? 12 A Yes. 13 Q All right. And Mr. Fisher says, 14 "Ryan, it appears, based on our conversation this 15 afternoon, that the discussions between 16 Swarm Technology and RPX have concluded." 17 Do you see that, sir? 18 A Yes, I see that. 19 Q So this indicates that Mr. Fisher and 20 Mr. Hanneken had a conversation on the phone, 21 right? 22 A Yes, I can see that.</p>	<p style="text-align: right;">Page 167</p> <p>1 that Swarm provided RPX? 2 A It's possible that they did. I was 3 not on the conference call, and I don't know the 4 details of the conversation. 5 Q Okay. So you can't say one way or the 6 other whether Mr. Fisher on behalf of Swarm and 7 Mr. Hanneken on behalf of RPX negotiated about a 8 potential price for RPX to buy Swarm's patents? 9 A I'm sure they spoke about that 10 Question No. 3 that you showed before. 11 Q Okay. All right. 12 So just to sum up, Swarm and 13 RPX entered a Non-Disclosure Agreement together, 14 right? 15 A Correct. 16 Q And Swarm sent RPX claim charts, some 17 information in Mr. Fisher's emails, and the 18 document titled "Financial Considerations," right? 19 A That is correct. 20 Q And Swarm and RPX had at least one 21 call to discuss a potential sale of Swarm's 22 patents, right?</p>
<p style="text-align: right;">Page 166</p> <p>1 Q And he indicates that the discussions 2 that Swarm and RPX had been having about a sale of 3 Swarm's patents have concluded, right, sir? 4 A That is correct. 5 Q And he asks for the return of 6 confidential information provided to RPX by Swarm, 7 right? 8 A That is correct. And based on that, 9 I'm assuming that RPX did their portion of the 10 Non-Disclosure Agreement, and they have destroyed 11 those copies. 12 Q Do you know what confidential 13 information he's referring to there? 14 MR. KELLY: Objection to form. 15 THE WITNESS: As indicated in that 16 email, it says "such material." I'm assuming that 17 everything John Fisher provided to RPX. 18 BY MR. SIGLER: 19 Q Do you know -- I may have asked you 20 this already. I apologize if I did. 21 Did Mr. Fisher and Mr. Hanneken 22 discuss on that call the financial information</p>	<p style="text-align: right;">Page 168</p> <p>1 A Correct. 2 Q All right. Has Swarm ever 3 participated in any trade shows, sir? 4 A Yes. 5 Q Which ones? 6 A The first one was IoT World 2017; and 7 then IOT Tech Expo 2017; and again IoT World 2018. 8 Q Okay. And all three of those trade 9 shows were in Santa Clara, California, right? 10 A That is correct. 11 Q And those are the only three trade 12 shows that Swarm has participated in anywhere, 13 right? 14 A I will not say anywhere, because by 15 anywhere, you're referring to trade shows outside 16 California, and there's a trade show outside 17 California that took place in Canada. It's a 18 robotics trade show. It's called the 19 R-I-R-O-S [sic]. IROS is the acronym for the 20 trade show. 21 Q So Swarm also participated in one 22 other trade show, is that right, besides the three</p>

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<p style="text-align: right;">Page 169</p> <p>1 in California?</p> <p>2 A Correct.</p> <p>3 Q And that trade show is in Canada,</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q Okay. Focusing on the three.</p> <p>7 IOET [sic] -- excuse me, strike that.</p> <p>8 Focusing on the three IoT trade shows</p> <p>9 in Santa Clara, how many days total did Swarm</p> <p>10 participate in those?</p> <p>11 A Typical trade show is three days.</p> <p>12 That's a typical trade show.</p> <p>13 I would have to go back -- in fact, on</p> <p>14 my website you may be able to see the actual --</p> <p>15 the actual dates for each trade show. It could be</p> <p>16 two days, it could be three days.</p> <p>17 Q Okay. Looking at one of your</p> <p>18 declarations, I came up with nine total days for</p> <p>19 those trade shows. Does that sound right?</p> <p>20 A That's about right.</p> <p>21 Q Okay. And you personally attended</p> <p>22 those three trade shows in Santa Clara on behalf</p>	<p style="text-align: right;">Page 171</p> <p>1 trade shows, and that's -- and, yes, difficulty,</p> <p>2 yes.</p> <p>3 Q All right. Putting financials aside,</p> <p>4 was it burdensome to travel to those trade shows</p> <p>5 in Santa Clara, California?</p> <p>6 A Yes. As you may have seen on my pitch</p> <p>7 deck, it says that this is a self-funded company,</p> <p>8 I am bootstrapping -- I am constrained by</p> <p>9 bootstrapping. It says right there. And in that</p> <p>10 sense, I need to take vacation time from my</p> <p>11 employer, use the vacation time in order to go and</p> <p>12 attend those trade shows.</p> <p>13 Q Well, it was important enough for</p> <p>14 Swarm that you take those steps, right, sir?</p> <p>15 A Yes.</p> <p>16 Q All right. Ballpark figure, how much</p> <p>17 total did Swarm spend participating in these three</p> <p>18 trade shows in Santa Clara?</p> <p>19 A In round numbers, each trade show is</p> <p>20 different, but I would say around \$6,000, that's</p> <p>21 for the floor, and we provided that documentation.</p> <p>22 And then when you add up airplanes,</p>
<p style="text-align: right;">Page 170</p> <p>1 of Swarm?</p> <p>2 A Yes, I did.</p> <p>3 Q How did you get there?</p> <p>4 A I got there by airplane. And we had</p> <p>5 provided the airplane tickets also on the</p> <p>6 documents that we produced.</p> <p>7 Q All right. And did you stay in a</p> <p>8 hotel while you were there at those trade shows?</p> <p>9 A Yes, I did.</p> <p>10 Q Did you have any difficulty traveling</p> <p>11 to and from those trade shows in Santa Clara?</p> <p>12 A Difficulty from Arizona to California,</p> <p>13 or from the hotel to the trade show?</p> <p>14 Q Difficulty traveling from Arizona to</p> <p>15 California.</p> <p>16 A Well, if you're asking about financial</p> <p>17 difficulty, the answer is yes. We -- this is a</p> <p>18 self-funded company, and we do the best we can in</p> <p>19 order to be able to fund this company.</p> <p>20 In this case, we used miles from</p> <p>21 credit cards, earned miles. We used those the</p> <p>22 best we can, and then we fly into -- into those</p>	<p style="text-align: right;">Page 172</p> <p>1 when you add up also hotel, meals -- I don't have</p> <p>2 the exact number, but we keep track of everything.</p> <p>3 If that is necessary, I can provide up to the last</p> <p>4 cent that we have spent.</p> <p>5 Q But Swarm spent a significant amount</p> <p>6 of its money attending these trade shows in</p> <p>7 California, right?</p> <p>8 A If we define "significant" as in using</p> <p>9 my savings, the answer is correct, yes.</p> <p>10 Q Okay. What percentage of Swarm's</p> <p>11 expenses in 2017 did it spend on going to the two</p> <p>12 trade shows in California?</p> <p>13 MR. KELLY: Object to the form.</p> <p>14 THE WITNESS: A great majority of our</p> <p>15 expenses go into patent prosecution.</p> <p>16 In order to provide you a percentage,</p> <p>17 I would need to ask my wife; she's the one who</p> <p>18 keeps track of all the expenses in the company.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q Okay, appreciate that. All right.</p> <p>21 So Swarm attended these three trade</p> <p>22 shows in Santa Clara to promote its technology,</p>

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1 right?

2 A Correct.

3 Q And it also attended these three trade
4 shows in Santa Clara to try to get companies to
5 license Swarm's patents, right?

6 MR. KELLY: Object to the form.

7 THE WITNESS: Again, as mentioned in
8 my pitch deck, the purpose of going to a trade
9 show is to exhibit technology. I went to the
10 exhibit part to exhibit technology, and as far as
11 the company, the goal is to get funding for the
12 technology. That was the main purpose.13 There's also the possibility of
14 licensing -- or presenting the opportunity to
15 license the patents.

16 BY MR. SIGLER:

17 Q Okay. So one of the reasons that
18 Swarm attended these trade shows in Santa Clara
19 was to seek out potential patent licensing
20 opportunities, right?21 A One of the reasons. Not the only one.
22 As I mentioned, the other one is to get an

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1 A Correct. As I mentioned before, we
2 want to present the opportunity to -- for
3 companies to consider licensing.

4 Q And how did Swarm intend to do that?

5 A At the trade show?

6 Q Yes.

7 A Well, the -- by the way, this -- my
8 booth, my exhibit, was the most popular exhibit in
9 the trade show. And the reason why is because I
10 had robots that were working with -- or exhibiting
11 swarm intelligence, and I was constantly attending
12 people, explaining the architecture.

13 That's all we did in the trade show.

14 We were explaining the architecture. It was
15 either myself or one of my chosen. They took
16 turns to help me at the booth. At one point, my
17 cousin went over there and helped me out, and we
18 were constantly explaining the architecture.19 To answer your question, I was there
20 to promote, to exhibit technology, with the hope
21 that somebody would invest in the company, or
22 perhaps a company would be interested in licensing

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1 investor.

2 Q Okay. So I think you also mentioned
3 one more, so let me try to sum it up.4 The reasons that Swarm attended these
5 three trade shows in California was to promote its
6 technology, seek out potential patent licensing
7 opportunities, and attract potential investors,
8 right?

9 A Correct.

10 Q All right. And, in fact, in one of
11 your declarations you say that one of the things
12 Swarm wanted to do at these trade shows was
13 generate interest among companies to license
14 Swarm's patents. Do you recall that, sir?

15 MR. KELLY: Object to the form.

16 THE WITNESS: Just repeat that. I
17 want to make sure that I got it.

18 BY MR. SIGLER:

19 Q Yeah. So one of the things Swarm
20 wanted to do at these trade shows is generate
21 interest among companies to license Swarm's
22 patents, right?

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1 those patents.

2 Q So was it a robot or robots?
3 I'm sorry.

4 A Robots. Robots.

5 Q More than one, okay.

6 A Yes. We -- we're required to have
7 more than one.

8 Q Okay.

9 A This architecture, it allows you to
10 have multiple devices to work collectively with
11 collective intelligence.12 Q Okay. And were those robots
13 prototypes?

14 A Yes.

15 Q So at these three trade shows in
16 Santa Clara, you displayed prototypes of Swarm's
17 products, right?

18 A Correct.

19 Q All right. And at these trade shows,
20 did Swarm ever display a sign stating that its
21 patents were available for licensing?

22 A Correct.

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<p style="text-align: right;">Page 177</p> <p>1 Q And did Swarm advertise that Swarm is</p> <p>2 a technology licensing company?</p> <p>3 MR. KELLY: Object to the form.</p> <p>4 THE WITNESS: I would have to go back</p> <p>5 and see the documentation, but as illustrated on</p> <p>6 my pitch deck, in my business plan, Swarm was</p> <p>7 seeking to obtain an investor in order to make</p> <p>8 products in Mesa, Arizona, and the possibility of</p> <p>9 licensing the patents has always been there.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q Okay. And were -- well, strike that.</p> <p>12 Did you speak to potential investors</p> <p>13 at these trade shows in Santa Clara?</p> <p>14 A Some of the people that visited the</p> <p>15 exhibit were interested, and so the answer is yes.</p> <p>16 Q Okay. Mr. Fahnert, could you please</p> <p>17 put Tab K on the screen? And we'll mark that as</p> <p>18 Exhibit 31, please.</p> <p>19 (Iniguez Exhibit 31 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. SIGLER:</p> <p>22 Q Do you see, Mr. Íñiguez, that this</p>	<p style="text-align: right;">Page 179</p> <p>1 Q And that after these trade shows,</p> <p>2 Swarm sent out letters seeking potential</p> <p>3 licensees, correct?</p> <p>4 A Correct.</p> <p>5 Q They also sent out some documentation</p> <p>6 to potential investors, right, sir?</p> <p>7 A That is correct.</p> <p>8 Q And that documentation included a</p> <p>9 confidential pitch deck, confidential business</p> <p>10 plan, and a confidential executive summary, right?</p> <p>11 A That is correct.</p> <p>12 Q And here you identify that those</p> <p>13 documents were sent to a number of different</p> <p>14 potential investors that are named here, right?</p> <p>15 A That is correct.</p> <p>16 Q All right. And those potential</p> <p>17 investors are identified here as Andreessen</p> <p>18 Horowitz, Bomming Star Venture Capital, Play</p> <p>19 Ground Global, Gradient Ventures, Lux Capital,</p> <p>20 Nexstar Partner, Intel Capital, Khosla Ventures,</p> <p>21 Jabil, Nvidia Business Development, Samsung</p> <p>22 Research America, and Peter PC, right, sir?</p>
<p style="text-align: right;">Page 178</p> <p>1 Exhibit 31 is Swarm's answers to Juniper's</p> <p>2 interrogatories regarding venue and jurisdiction?</p> <p>3 A Yep, I see that.</p> <p>4 Q And did you review these interrogatory</p> <p>5 answers, sir?</p> <p>6 A Yes, I did.</p> <p>7 Q And in fact, you verified these</p> <p>8 answers, right, sir?</p> <p>9 A Correct.</p> <p>10 Q All right. Let's go to page 4 of the</p> <p>11 document, and if we could blow up the part that</p> <p>12 says "ANSWER," and I want to focus on the</p> <p>13 paragraph that starts with "Swarm did not</p> <p>14 undertake."</p> <p>15 Do you see that paragraph,</p> <p>16 Mr. Íñiguez?</p> <p>17 A Yes, I see it.</p> <p>18 Q Okay. And this talks about -- well,</p> <p>19 strike that.</p> <p>20 Swarm affirms here that it attended</p> <p>21 these three trade shows in California, right?</p> <p>22 A Correct.</p>	<p style="text-align: right;">Page 180</p> <p>1 A That is correct.</p> <p>2 Q And were any of those firms or people</p> <p>3 located in California that received these</p> <p>4 documents?</p> <p>5 A It is my understanding that all of</p> <p>6 them are located in California.</p> <p>7 Q And so Swarm sent documents to</p> <p>8 employees of those companies or the individuals</p> <p>9 listed there in California, right?</p> <p>10 A Correct.</p> <p>11 Q All right. And is Jabil the name of a</p> <p>12 company?</p> <p>13 A No. I could not find the last name.</p> <p>14 It's a personal investor, but all I had was the</p> <p>15 first name.</p> <p>16 Q All right. And I assume Peter PC is</p> <p>17 also a private investor?</p> <p>18 A He is another private investor,</p> <p>19 correct.</p> <p>20 Q Did Swarm also communicate at one</p> <p>21 point with someone named Neil Naveen of Orzota,</p> <p>22 Inc.?</p>

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<p style="text-align: right;">Page 181</p> <p>1 A Correct.</p> <p>2 Q And who is Mr. Naveen?</p> <p>3 A At the time, he represented a company</p> <p>4 that provided machine learning software, and we</p> <p>5 discussed the possibility of him doing a software</p> <p>6 module in order to detect objects, basically to</p> <p>7 mount a camera on my robots, and then have them --</p> <p>8 have them identify multiple objects.</p> <p>9 We went back and forth on a few</p> <p>10 emails, and he is the person.</p> <p>11 Q Okay. Did you talk to Mr. Naveen at</p> <p>12 all about licensing Swarm's patents?</p> <p>13 A No. He was acting more as the</p> <p>14 provider of a service. In this case, he was</p> <p>15 looking into providing software for my company,</p> <p>16 which never happened.</p> <p>17 Q And you signed a non-disclosure or</p> <p>18 confidentiality agreement with him, is that</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q All right. And did that agreement</p> <p>22 state where any disputes under it would be heard?</p>	<p style="text-align: right;">Page 183</p> <p>1 Q Okay. We've been going about an hour.</p> <p>2 Why don't we take another break, if that's</p> <p>3 all right with you, Mr. Íñiguez.</p> <p>4 MR. KELLY: Thank you.</p> <p>5 THE VIDEOGRAPHER: Okay, we are going</p> <p>6 off the record. The time is 1:35.</p> <p>7 (A break was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on the</p> <p>9 record. The time is 1:50.</p> <p>10 MR. KELLY: I'm trying hard to be</p> <p>11 respectful of the Court's order to not interpose</p> <p>12 objections, but I did want to designate -- or did</p> <p>13 want to mention on the record that your</p> <p>14 questions -- your earlier questions regarding</p> <p>15 Swarm's proprietary and trade secret information,</p> <p>16 we believe that -- and I allowed you some -- some</p> <p>17 good faith leeway, but for that reason, we didn't</p> <p>18 object on the record, but we believe that subject</p> <p>19 matter is beyond the scope of the jurisdictional</p> <p>20 discovery that the parties have previously agreed</p> <p>21 to in writing.</p> <p>22 We don't need to argue about that, but</p>
<p style="text-align: right;">Page 182</p> <p>1 A I don't -- I would have to look into</p> <p>2 the document. I do not know the answer.</p> <p>3 Q Okay. Well, I would show you the</p> <p>4 document, but it was provided to me, but all of it</p> <p>5 redacted out. We'll circle back to that at the</p> <p>6 end.</p> <p>7 Did the documents that you sent to</p> <p>8 these potential investors discuss Swarm's patents?</p> <p>9 A The documents that we provided --</p> <p>10 for example, the pitch deck -- mentions that Swarm</p> <p>11 has patents, as well as the business plan and the</p> <p>12 executive summary. So those documents mention</p> <p>13 those patents.</p> <p>14 Q Do they talk about Swarm's efforts to</p> <p>15 license its patents?</p> <p>16 A If you look into the business plan, it</p> <p>17 says that it has multiple sources of revenue, and</p> <p>18 one of these sources of revenue would be to</p> <p>19 eventually license those patents.</p> <p>20 Sadly, it never happened, and a source</p> <p>21 of revenue never became a reality -- or has not</p> <p>22 become a reality.</p>	<p style="text-align: right;">Page 184</p> <p>1 I wanted to lay that on the record.</p> <p>2 MR. SIGLER: Understood, thank you.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q All right, Mr. Íñiguez, let's talk</p> <p>5 about some of these documents that were sent to</p> <p>6 potential investors.</p> <p>7 Can we please put Tab DD on the</p> <p>8 screen? And if you could let me know what exhibit</p> <p>9 number that should be, Mr. Fahnert, that would be</p> <p>10 great?</p> <p>11 THE VIDEOGRAPHER: DD will be 32.</p> <p>12 MR. KELLY: Thank you.</p> <p>13 (Iniguez Exhibit 32 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Mr. Íñiguez, do you have Exhibit 32 on</p> <p>17 the screen there in front of you?</p> <p>18 A Yes.</p> <p>19 Q And the front cover of this document</p> <p>20 says Swarm Technology Business Plan, right?</p> <p>21 A Correct.</p> <p>22 Q And is this one of the documents that</p>

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<p style="text-align: right;">Page 185</p> <p>1 you sent to potential investors in California?</p> <p>2 A Yes. Not all of them got this</p> <p>3 document. Some got pitch deck, and/or executive</p> <p>4 summary, and/or business plan.</p> <p>5 Q Understood. Did you write this</p> <p>6 document, sir?</p> <p>7 A Yes, I did.</p> <p>8 Q Did anyone else participate in the</p> <p>9 writing of this document?</p> <p>10 A No.</p> <p>11 Q And I couldn't find a date in this</p> <p>12 document. Do you know what the date of this</p> <p>13 document is?</p> <p>14 A I don't have -- it looks like there's</p> <p>15 a year there, 2017 on the top.</p> <p>16 Q Oh, yeah. Thank you for that. My</p> <p>17 printed version I'm looking at did not print that</p> <p>18 part, so I appreciate that. All right.</p> <p>19 So it appears that this Business Plan</p> <p>20 is dated 2017, right, sir?</p> <p>21 A Correct.</p> <p>22 Q All right. What was the purpose of</p>	<p style="text-align: right;">Page 187</p> <p>1 Q And the other two streams are</p> <p>2 licensing our intellectual property, right?</p> <p>3 A Correct.</p> <p>4 Q So two of the three revenue streams</p> <p>5 making up the revenue model for Swarm Technology</p> <p>6 relate to licensing Swarm's intellectual property,</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q All right. Please take us to page 14</p> <p>10 of this document.</p> <p>11 All right, Mr. Íñiguez, there's a part</p> <p>12 in the middle there under the second redacted</p> <p>13 block that says "Strategy to break into this</p> <p>14 market." Do you see that?</p> <p>15 A Yes, I see it.</p> <p>16 Q What market is this referring to?</p> <p>17 MR. KELLY: Object to the form.</p> <p>18 THE WITNESS: The first one, letter A,</p> <p>19 is talking about intent-based networks. Exhibit</p> <p>20 or letter B is talking about the IoT market in</p> <p>21 general -- well, essentially those three other --</p> <p>22 B, C and D are talking about IoT in general.</p>
<p style="text-align: right;">Page 186</p> <p>1 this document?</p> <p>2 A The purpose of the Business Plan was</p> <p>3 to describe the business.</p> <p>4 Q Okay. And in the limited time I have</p> <p>5 left, Mr. Fahnert, can you take us to the tenth</p> <p>6 page of this document, please? It's got a</p> <p>7 Bates stamp ending in 314. All right.</p> <p>8 And here you see, Mr. Íñiguez, the</p> <p>9 version of this document I received has some</p> <p>10 information that's been redacted?</p> <p>11 A Yes.</p> <p>12 Q Okay. And there's a section there on</p> <p>13 page 10 that says "Revenue Model."</p> <p>14 Do you see that?</p> <p>15 A Correct.</p> <p>16 Q And it says, "The revenue model for</p> <p>17 Swarm Technology is comprised of three streams,"</p> <p>18 right?</p> <p>19 A Correct.</p> <p>20 Q All right. And one of those streams</p> <p>21 is consulting fees, right?</p> <p>22 A Correct.</p>	<p style="text-align: right;">Page 188</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. Actually, could you remove the</p> <p>3 blowup, please? It says at the top, "Why is</p> <p>4 intent-based network significant?"</p> <p>5 Do you see that, sir?</p> <p>6 A Yes. Could you make it bigger? Good.</p> <p>7 Q It's difficult for me because the</p> <p>8 document is redacted, so I'm just trying to figure</p> <p>9 out where it says "Strategy to break into this --</p> <p>10 market," what does "this market" refer to? Is it</p> <p>11 referring to intent-based network?</p> <p>12 A Yes. Can you zoom back on "Why is</p> <p>13 intent-based network significant?" I'm trying to</p> <p>14 get context to answer your question.</p> <p>15 Yeah, this is a beautiful quote from</p> <p>16 the patent. And why do I say "beautiful"? It's</p> <p>17 because this is the essence of the invention.</p> <p>18 I broke away from every computer</p> <p>19 architecture that had existed in the history of</p> <p>20 the world, and I said, from now on, the CPU here,</p> <p>21 or the solar, is going to have intentions to send</p> <p>22 there. That's a quote, "intended."</p>

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<p style="text-align: right;">Page 189</p> <p>1 And then you have the processing</p> <p>2 units, autonomous units, to fill in that</p> <p>3 intention, and this is why I am the person who</p> <p>4 invented what is known today as intent-based</p> <p>5 proactive autonomous networks.</p> <p>6 Q Okay. What does "this market" refer</p> <p>7 to?</p> <p>8 A I created a new field, which is</p> <p>9 basically what I just mentioned, having a computer</p> <p>10 network to execute an intention. And in order to</p> <p>11 break into that market, I needed to go into those</p> <p>12 conferences or exhibits or trade shows to exhibit</p> <p>13 my groundbreaking new technology.</p> <p>14 Q Okay. So one of the things you wanted</p> <p>15 to do to break into this market was exhibit at</p> <p>16 these three trade shows in California, right?</p> <p>17 A Correct.</p> <p>18 Q And the other thing you said that</p> <p>19 Swarm was going to do was contact Apstra, right?</p> <p>20 A Correct.</p> <p>21 Q And Apstra is a company in California,</p> <p>22 and you understand they're one of the plaintiffs</p>	<p style="text-align: right;">Page 191</p> <p>1 A I wrote that document.</p> <p>2 Q Okay. And if we could go to page 9 of</p> <p>3 the document. It ends in 1331. And here, sir,</p> <p>4 there's a discussion of the '777 patent, right?</p> <p>5 A Correct.</p> <p>6 Q As well as the '850 patent</p> <p>7 application, right?</p> <p>8 A Correct.</p> <p>9 Q And so Swarm identified that patent</p> <p>10 and that application to potential investors,</p> <p>11 right?</p> <p>12 A Yes, correct.</p> <p>13 Q Okay. Let's go to page 15, please,</p> <p>14 that ends in 1337. Okay.</p> <p>15 This slide is entitled "Funding,"</p> <p>16 right, sir?</p> <p>17 A Correct.</p> <p>18 Q And the second to last sentence of</p> <p>19 this slide says, "As an innovation company, we</p> <p>20 will continue to grow our patent portfolio in the</p> <p>21 field of distributed artificial intelligence."</p> <p>22 Do you see that, sir?</p>
<p style="text-align: right;">Page 190</p> <p>1 in this case, right?</p> <p>2 A Correct.</p> <p>3 Q All right. And what did you intend to</p> <p>4 contact Apstra about?</p> <p>5 A We have reviewed that documentation.</p> <p>6 We sent a letter to Apstra presenting a business</p> <p>7 opportunity, and as you showed before, we sent</p> <p>8 three letters, and we got no response.</p> <p>9 Q And those letters to Apstra offered an</p> <p>10 opportunity to license Swarm's patents, right?</p> <p>11 A Correct.</p> <p>12 Q All right. You can put that document</p> <p>13 aside, and let's mark Exhibit 33. It will be</p> <p>14 Tab EE.</p> <p>15 (Iniguez Exhibit 33 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. SIGLER:</p> <p>18 Q Mr. Íñiguez, is this one of the</p> <p>19 documents that you sent to potential investors</p> <p>20 about Swarm?</p> <p>21 A Correct, that is the pitch deck.</p> <p>22 Q And did you write this document, sir?</p>	<p style="text-align: right;">Page 192</p> <p>1 A Yes, I see it.</p> <p>2 Q And then it says, "To accelerate the</p> <p>3 speed of development," and then the rest of it is</p> <p>4 redacted. Do you see that, sir?</p> <p>5 A Correct.</p> <p>6 Q Can you tell me generally what is</p> <p>7 redacted there?</p> <p>8 MR. KELLY: Objection to the form of</p> <p>9 the question. And this is another instance where</p> <p>10 I'd like to state for the record specifically that</p> <p>11 this is beyond the scope of the jurisdictional</p> <p>12 discovery that the parties previously agreed to in</p> <p>13 writing, and that's why we redacted it. I think</p> <p>14 to ask the witness about it right now would defeat</p> <p>15 the purpose of redacting.</p> <p>16 And I know we don't agree about the</p> <p>17 propriety of redacting, but let's take that up in</p> <p>18 motion practice as opposed to with this witness.</p> <p>19 MR. SIGLER: All right. And I think</p> <p>20 you're seeing here in the real time the extreme</p> <p>21 difficulty the redaction process is putting on me</p> <p>22 to try to get testimony on these documents.</p>

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<p style="text-align: right;">Page 193</p> <p>1 All right, and of course, that</p> <p>2 redacted piece right there follows up a discussion</p> <p>3 on the patent portfolio, so I don't have a clue</p> <p>4 how it's not relevant.</p> <p>5 Okay, we can put that document to the</p> <p>6 side.</p> <p>7 MR. KELLY: For the record, I didn't</p> <p>8 say it wasn't relevant, sir. I said it was beyond</p> <p>9 the scope of the discovery that the parties</p> <p>10 previously agreed to in writing.</p> <p>11 MR. SIGLER: Yeah. Well, that's what</p> <p>12 I meant, it's not beyond that scope, it doesn't</p> <p>13 appear, but regardless, let's go -- let's put that</p> <p>14 one aside. Let's go to Tab FF, please, which will</p> <p>15 be Exhibit 34.</p> <p>16 (Iniguez Exhibit 34 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Is this one of the documents that you</p> <p>20 sent to potential investors, Mr. Íñiguez?</p> <p>21 A Correct.</p> <p>22 Q And what document is this?</p>	<p style="text-align: right;">Page 195</p> <p>1 And Mr. Íñiguez, here you show the</p> <p>2 '777 patent again, right, sir?</p> <p>3 A Correct.</p> <p>4 Q And the 850 patent application, right,</p> <p>5 sir?</p> <p>6 A Correct.</p> <p>7 Q All right. And it says at the top of</p> <p>8 this slide, "Our IP gives us the right to exclude</p> <p>9 others from monetizing our technology until 2033."</p> <p>10 Do you see that, sir?</p> <p>11 A Yes, I see.</p> <p>12 Q What did you mean by "exclude others"?</p> <p>13 MR. KELLY: Object to the form.</p> <p>14 THE WITNESS: I'm basically</p> <p>15 paraphrasing the Constitution of the</p> <p>16 United States, Article 1, Section 8. As inventor,</p> <p>17 I have rights granted by the government for a</p> <p>18 limited time, and that's what I'm saying over</p> <p>19 there.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. So the patents give you the</p> <p>22 right to prevent others from monetizing that</p>
<p style="text-align: right;">Page 194</p> <p>1 A This is a pitch deck.</p> <p>2 Q All right. And Exhibit 33 was also a</p> <p>3 pitch deck.</p> <p>4 Is one of these earlier than the</p> <p>5 other?</p> <p>6 A This one is earlier than the other.</p> <p>7 The reason why I changed it is because</p> <p>8 I got the feedback from people saying that they</p> <p>9 got confused about the ants on those pictures, so</p> <p>10 I went from the ants into a robot.</p> <p>11 I don't know if that was a good</p> <p>12 decision or not, but that was the purpose of the</p> <p>13 change.</p> <p>14 Q Okay. Would this pitch deck have been</p> <p>15 sent to investors in 2017?</p> <p>16 A Yes, it was sent to some potential</p> <p>17 investors.</p> <p>18 Q Okay. And did you draft this</p> <p>19 document, sir?</p> <p>20 A I did.</p> <p>21 Q All right. Let's go to page 14,</p> <p>22 please. It ends in 1352.</p>	<p style="text-align: right;">Page 196</p> <p>1 technology? Is that what you're saying?</p> <p>2 A What I'm saying is the Constitution</p> <p>3 grants me, for a limited time, rights to my own</p> <p>4 discoveries as an inventor, and basically that's</p> <p>5 what I'm saying right here.</p> <p>6 Q Okay. Let's go to page 15, please,</p> <p>7 the next page. It says, "Risks. Our intellectual</p> <p>8 property plays in the field of gigantic</p> <p>9 competitors." Do you see that, sir?</p> <p>10 A Yes, I see it.</p> <p>11 Q And I assume, sir, that the portion</p> <p>12 that's redacted there is the names of Swarm's</p> <p>13 competitors; is that right?</p> <p>14 A Correct. And it's not hard to see how</p> <p>15 those competitors are gigantic compared to my</p> <p>16 company that I'm building out of the kitchen in my</p> <p>17 house.</p> <p>18 Q Is Juniper identified there as a</p> <p>19 competitor?</p> <p>20 MR. KELLY: Object to the form of the</p> <p>21 question. And to the extent it's beyond the scope</p> <p>22 of the deposition, it's an improper question</p>

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<p style="text-align: right;">Page 197</p> <p>1 entirely.</p> <p>2 THE WITNESS: Correct, it's beyond the</p> <p>3 scope, and I don't remember.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Is Apstra identified as a competitor</p> <p>6 in there?</p> <p>7 MR. KELLY: Same objection, same</p> <p>8 instruction.</p> <p>9 THE WITNESS: That would be, again,</p> <p>10 trade secret.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Well, under that there's a discussion</p> <p>13 about litigation, right, sir?</p> <p>14 A Are you referring to -- can you point</p> <p>15 me to what you have in mind?</p> <p>16 Q Sure. You wrote there that "Should</p> <p>17 [these] competitors decide to circumvent Swarm's</p> <p>18 IP, they count with ample funding and unlimited</p> <p>19 legal resources. To quote Xerxes, their, 'Arrows</p> <p>20 will block out the sun.'"</p> <p>21 That's what you wrote, right?</p> <p>22 A I didn't write the quote. I read the</p>	<p style="text-align: right;">Page 199</p> <p>1 right?</p> <p>2 A I was represented by Mr. Kelly, but</p> <p>3 again, he was not litigating for Swarm.</p> <p>4 Q And then you quote Leonidas, "Then we</p> <p>5 shall have our battle in the shade!" right?</p> <p>6 A Correct.</p> <p>7 Q What's the battle you're referring to?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: Can you repeat? Are you</p> <p>10 asking -- could you repeat the question, please?</p> <p>11 BY MR. SIGLER:</p> <p>12 Q What is the battle you're referring to</p> <p>13 there in that quote?</p> <p>14 A I don't know. That quote corresponds</p> <p>15 to the one on top. It follows from the top.</p> <p>16 Q Right. And the one at the top talks</p> <p>17 about competitors circumventing your IP, right?</p> <p>18 A Again, Mr. Kelly was not representing</p> <p>19 Swarm as a litigator. He was practicing patent</p> <p>20 law, prosecuting patents at the patent office.</p> <p>21 Q Is he representing Swarm as a</p> <p>22 litigator right now?</p>
<p style="text-align: right;">Page 198</p> <p>1 quote, and I put it in there.</p> <p>2 Q And then you say to potential</p> <p>3 investors that Swarm's represented by Mr. Kelly,</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q So you tell investors in 2017 that you</p> <p>7 have a lawyer representing you, right?</p> <p>8 A Correct, on the record.</p> <p>9 Q And then you quote Leonidis, "Then we</p> <p>10 shall have our battle in the shade!" right?</p> <p>11 A I'd like to continue with my --</p> <p>12 MR. KELLY: He was finishing his</p> <p>13 answer. You inadvertently cut him off.</p> <p>14 MR. SIGLER: Oh, I'm sorry, I didn't</p> <p>15 hear. Go ahead, sir.</p> <p>16 THE WITNESS: At that time, Michael</p> <p>17 Kelly was my patent attorney. He was prosecuting</p> <p>18 patents with the United States Patent Office. He</p> <p>19 was not a litigating attorney for Swarm.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay, but you told potential investors</p> <p>22 in 2017 that you were represented by Mr. Kelly,</p>	<p style="text-align: right;">Page 200</p> <p>1 A Yes, and this is a consequence of</p> <p>2 Juniper's lawsuit against Swarm, by the way.</p> <p>3 Before I received this lawsuit from</p> <p>4 Juniper, I did not have legal representation in</p> <p>5 order to wage a battle in court.</p> <p>6 Q Why are you telling investors in 2017</p> <p>7 that you had an attorney and you were ready to</p> <p>8 have a battle?</p> <p>9 MR. KELLY: Object to the form.</p> <p>10 THE WITNESS: Basically what I'm</p> <p>11 saying there is that I got the best possible</p> <p>12 patent attorney in the world, and his name is</p> <p>13 Michael K. Kelly.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q All right, we can take that document</p> <p>16 down. Let's move on to Tab GG, please, and that</p> <p>17 will be, I believe, Exhibit 35.</p> <p>18 (Iniguez Exhibit 35 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, is this one of the</p> <p>22 documents you sent to potential investors?</p>

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<p>1 A Correct.</p> <p>2 Q Did you write this document?</p> <p>3 A I did.</p> <p>4 Q All right. And this is the executive</p> <p>5 summary that you referred to as being sent to</p> <p>6 potential investors, right?</p> <p>7 A Yes, and this is a copy -- basically a</p> <p>8 reduced version of the business plan, and what you</p> <p>9 see there is also included in the business plan.</p> <p>10 Q All right. Those are all the</p> <p>11 questions I had on that document.</p> <p>12 Do you recall speaking to someone from</p> <p>13 NVIDIA at the 2018 IoT World trade show?</p> <p>14 A Yes. The person -- just go ahead.</p> <p>15 Q Go ahead, you were saying something.</p> <p>16 A Yeah, the person represents a</p> <p>17 development branch from NVIDIA.</p> <p>18 Q Okay. And did you send that person</p> <p>19 from NVIDIA the pitch deck after the IoT world</p> <p>20 trade show in 2018?</p> <p>21 A Yes, and that is included on the list</p> <p>22 that we have provided.</p>	<p>1 A Yes.</p> <p>2 Q And you're enclosing a copy of the</p> <p>3 pitch deck, right?</p> <p>4 A Correct.</p> <p>5 Q And it's addressed to someone with a</p> <p>6 google.com address, do you see that?</p> <p>7 A Correct.</p> <p>8 And I need to elaborate on this. I</p> <p>9 mentioned before this morning that this person</p> <p>10 represents Global Ventures, which I met this</p> <p>11 person at a trade show, and he provided interest</p> <p>12 to invest in Swarm. I provided that information,</p> <p>13 and he gave me a Google email address.</p> <p>14 And if you look -- if you search for</p> <p>15 this person on LinkedIn, you're going to see that</p> <p>16 he is the funder of Global Ventures, and for some</p> <p>17 reason, he gave me this google.com email.</p> <p>18 Q Okay, thank you for that</p> <p>19 clarification, sir. We can take that document</p> <p>20 down, and let's move on.</p> <p>21 Are you familiar with Samsung Research</p> <p>22 America?</p>
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<p>1 Q Okay. And did you also send the pitch</p> <p>2 deck and executive summary to someone at Intel in</p> <p>3 2017?</p> <p>4 A For the record, it's Intel Capital.</p> <p>5 This is an investment firm branch from Intel.</p> <p>6 Q Okay. But it's part of Intel, right?</p> <p>7 A I don't know the internal structure,</p> <p>8 but all I know is that it is Intel Capital.</p> <p>9 Q Okay. And we saw earlier that you</p> <p>10 sent NVIDIA and Intel letters in 2018 about</p> <p>11 licensing Swarm's patents, right?</p> <p>12 A Correct.</p> <p>13 MR. SIGLER: Please, Mr. Fahnert,</p> <p>14 please call up Tab JJ, and that will be</p> <p>15 Exhibit 36.</p> <p>16 (Iniguez Exhibit 36 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Mr. Íñiguez, do you see Exhibit 36 is</p> <p>20 an email dated October 17, 2017?</p> <p>21 A Yes.</p> <p>22 Q And it's from you, right?</p>	<p>1 A Yes, I am.</p> <p>2 Q And they're located in Northern</p> <p>3 California, right?</p> <p>4 A Correct.</p> <p>5 Q And did Swarm ever talk to them about</p> <p>6 Swarm's patents?</p> <p>7 A We had a discussion -- you saw a</p> <p>8 document for this conversation, or should I go</p> <p>9 ahead and tell you? Do you have a document to</p> <p>10 show?</p> <p>11 Q Please go ahead, if you can answer my</p> <p>12 question.</p> <p>13 A We -- this person -- these people --</p> <p>14 person came to my booth, to my exhibit, and I</p> <p>15 quote, he said, "I'm very impressed with what you</p> <p>16 have. I would like to see the opportunity to</p> <p>17 translate this into a product."</p> <p>18 Then we signed an NDA, and we had</p> <p>19 conversations about how to translate that into a</p> <p>20 product. That never happened. We never executed</p> <p>21 on that idea, but that was the nature of the</p> <p>22 conversation.</p>

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<p>1 Q Okay. And do you recall sending</p> <p>2 emails to -- well, strike that.</p> <p>3 Was that person named Tom Kim from</p> <p>4 Samsung?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: Perfect.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And do you recall sending him some</p> <p>9 emails that reference Swarm's patents?</p> <p>10 A I don't recall that off the top of my</p> <p>11 memory. I would have to go back to the documents</p> <p>12 to refresh my memory.</p> <p>13 Q Okay. And you mentioned that you</p> <p>14 signed an NDA with Samsung Research America,</p> <p>15 right?</p> <p>16 A Correct.</p> <p>17 Q Okay. And did that NDA state where --</p> <p>18 well, strike that.</p> <p>19 Does that NDA state a location or a</p> <p>20 court where any disputes under that agreement will</p> <p>21 be litigated?</p> <p>22 MR. KELLY: Objection, form.</p>	<p>1 Q And you signed it on April 19th, 2021,</p> <p>2 right?</p> <p>3 A Correct.</p> <p>4 Q All right. And do you recall you</p> <p>5 signed this under the penalty of perjury under the</p> <p>6 laws of the United States?</p> <p>7 A Correct.</p> <p>8 Q Okay, let's go to page 2 of this</p> <p>9 document, please, and let's take a look at</p> <p>10 paragraph 10.</p> <p>11 And here, Mr. Íñiguez, you state under</p> <p>12 oath that Swarm has sent licensing letters to</p> <p>13 various companies in a number of other states</p> <p>14 besides California, right?</p> <p>15 A Correct.</p> <p>16 Q Who are those other companies?</p> <p>17 MR. KELLY: Object to the form.</p> <p>18 THE WITNESS: You have that</p> <p>19 information in the documents.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q I don't have that information.</p> <p>22 A Yes. In the documents that we</p>
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<p>1 THE WITNESS: I don't recall. I would</p> <p>2 have to go back to the document to see what -- to</p> <p>3 see -- to read what it says.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Okay. Yeah, I'd like to see that too.</p> <p>6 Let's go on to -- let's take a look at</p> <p>7 your declaration. Mr. Fahnert, please call up</p> <p>8 Tab RR, and that will be Exhibit 37, is that</p> <p>9 right?</p> <p>10 THE VIDEOGRAPHER: Correct, 37.</p> <p>11 (Iniguez Exhibit 37 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Mr. Íñiguez, do you recognize this as</p> <p>15 an amended declaration that you provided in this</p> <p>16 case?</p> <p>17 A Yes.</p> <p>18 Q All right. And if we could please go</p> <p>19 to the last page of this declaration.</p> <p>20 Is that your signature there,</p> <p>21 Mr. Íñiguez?</p> <p>22 A Correct.</p>	<p>1 produced, you have all the letters that we sent to</p> <p>2 any company within or outside California.</p> <p>3 Q Okay. Yeah, I'm asking you because I</p> <p>4 don't have the letters outside of California, but</p> <p>5 maybe they don't exist.</p> <p>6 Okay, so sitting here today, you can't</p> <p>7 tell me the various companies in other states</p> <p>8 besides California that Swarm sent licensing</p> <p>9 letters to?</p> <p>10 A I don't have the list on the top of my</p> <p>11 head. You showed me before a document that</p> <p>12 contains a list of companies, but that's all I can</p> <p>13 remember at this point.</p> <p>14 Q Okay. Did Swarm send claim charts to</p> <p>15 any companies outside of California?</p> <p>16 MR. KELLY: Object to the form.</p> <p>17 THE WITNESS: There is one company</p> <p>18 outside California.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q Who's that?</p> <p>21 A Microsoft.</p> <p>22 Q So there's one company outside --</p>

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<p style="text-align: right;">Page 209</p> <p>1 strike that.</p> <p>2 Microsoft is the only company outside</p> <p>3 California that Swarm has sent claim charts to</p> <p>4 that map their products to Swarm's patents, right?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q All right. Has Swarm ever relied on</p> <p>9 letters it's written to a company to claim that</p> <p>10 company has willfully infringed its patents?</p> <p>11 MR. KELLY: Objection, form.</p> <p>12 THE WITNESS: Basically the letter is</p> <p>13 the same that you have shown me before offering a</p> <p>14 licensing opportunity.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. And in the Amazon case,</p> <p>17 for example, Swarm relies on that same July 16,</p> <p>18 2018, letter to argue that Amazon was on notice of</p> <p>19 Swarm's patents, right?</p> <p>20 MR. KELLY: Objection to form of the</p> <p>21 question, and instruct the witness not to answer</p> <p>22 to the extent doing show would reveal the</p>	<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: If judicial is within</p> <p>2 the court, then extra-judicial would be outside</p> <p>3 the court. That would be my understanding.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Okay. So anything outside of court,</p> <p>6 to your understanding, would be extra-judicial,</p> <p>7 right?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q And paragraph 13 you say, "Swarm has</p> <p>12 never sent a cease and desist letter to anyone."</p> <p>13 Do you see that, sir?</p> <p>14 A That is correct.</p> <p>15 Q What's a cease and desist letter?</p> <p>16 MR. KELLY: Object to the form.</p> <p>17 THE WITNESS: I'm sure there's a legal</p> <p>18 definition for that.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q What's your definition of it?</p> <p>21 This is your declaration, right?</p> <p>22 A That would when to say a company,</p>
<p style="text-align: right;">Page 210</p> <p>1 substance of attorney-client privileged</p> <p>2 communication.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Can you answer the question, sir?</p> <p>5 A That information is public</p> <p>6 information. I don't have the entire Complaint</p> <p>7 against Amazon. It's a large document.</p> <p>8 Q All right. Well, I can just take a</p> <p>9 look at that myself and include it in our</p> <p>10 briefing.</p> <p>11 Let's go to paragraph 12 of the</p> <p>12 declaration, please. And you state here, "None of</p> <p>13 Swarm's communications with Juniper (or anyone</p> <p>14 else) — whether written or oral — included any</p> <p>15 demand or deadline, nor did Swarm threaten any</p> <p>16 judicial or extra-judicial enforcement action of</p> <p>17 any kind whatsoever."</p> <p>18 Did I read that correctly, sir?</p> <p>19 A Yes.</p> <p>20 Q What is an extra-judicial enforcement</p> <p>21 action?</p> <p>22 MR. KELLY: Object to the form.</p>	<p style="text-align: right;">Page 212</p> <p>1 you're not allowed -- to make a demand,</p> <p>2 essentially, saying you're not allowed to use my</p> <p>3 patents in your products, which I have never done.</p> <p>4 I have never sent a cease and desist</p> <p>5 letter to anyone, inside California or outside</p> <p>6 California.</p> <p>7 Q All right. Well, I'm up against my</p> <p>8 time limit. Mr. Íñiguez, I appreciate your time</p> <p>9 today. I know your counsel had stated that he may</p> <p>10 have some questions for you.</p> <p>11 Before we get to that, I just wanted</p> <p>12 to state on the record that we continue to believe</p> <p>13 that we're entitled to unredacted versions of the</p> <p>14 business documents we looked at. I don't think</p> <p>15 there's any basis to have those withheld, given</p> <p>16 that there's a protective order here, and our</p> <p>17 examination and investigation here has been</p> <p>18 impeded because of those redactions.</p> <p>19 Similarly, we believe we're entitled</p> <p>20 to the unredacted version of the Financial</p> <p>21 Considerations document that was given from Swarm</p> <p>22 to RPX. We believe that's relevant here to the</p>

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<p>1 venue issue. We don't know what is contained in</p> <p>2 that document and have no way of examining</p> <p>3 Mr. Íñiguez on it effectively without having it.</p> <p>4 And we also continue to believe we're</p> <p>5 entitled to the NDA agreements with Mr. Naveen and</p> <p>6 Samsung Research America for multiple reasons,</p> <p>7 including whether those contain form selection</p> <p>8 clauses like the ones that -- excuse me, like the</p> <p>9 one Swarm agreed to with RPX.</p> <p>10 Therefore, we're going to hold the</p> <p>11 30(b)(6) portion of this deposition open and</p> <p>12 reserve our right to continue seeking that</p> <p>13 information, including in our response brief to</p> <p>14 the Court. And with that, I pass the witness.</p> <p>15 MR. KELLY: Can we take 10? Can we</p> <p>16 take 10 minutes, please? We'll resume in 10? Off</p> <p>17 the record?</p> <p>18 MR. SIGLER: Okay.</p> <p>19 THE VIDEOGRAPHER: Okay, going off the</p> <p>20 record. The time is 2:26.</p> <p>21 (A break was taken.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p>	<p>1 Did you regard your communications</p> <p>2 with Mr. Fisher as attorney-client privileged</p> <p>3 communications?</p> <p>4 A Yes.</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 BY MR. KELLY:</p> <p>7 Q Did you ever accuse Juniper of</p> <p>8 infringement?</p> <p>9 A No.</p> <p>10 Q Apstra?</p> <p>11 A No.</p> <p>12 Q Did you ever threaten Juniper or</p> <p>13 Apstra with litigation?</p> <p>14 A No.</p> <p>15 MR. SIGLER: Objection, form.</p> <p>16 BY MR. KELLY:</p> <p>17 Q Did you ever send -- did you ever send</p> <p>18 Juniper -- did you ever threaten litigation</p> <p>19 against Juniper?</p> <p>20 A No.</p> <p>21 Q Did you ever threaten litigation</p> <p>22 against Apstra?</p>
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<p>1 record. The time is 2:47.</p> <p>2 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>3 BY MR. KELLY:</p> <p>4 Q Mr. Íñiguez, I'd like to just go</p> <p>5 through and clarify a few of the previous answers</p> <p>6 that you gave to Mr. Sigler earlier in this</p> <p>7 deposition.</p> <p>8 Earlier he asked you if you spoke with</p> <p>9 John Fisher when you were preparing for this</p> <p>10 deposition, and you did not speak with</p> <p>11 John Fisher, correct?</p> <p>12 A I did not.</p> <p>13 Q Did you review the declarations that</p> <p>14 John Fisher had submitted in this litigation?</p> <p>15 A I did.</p> <p>16 Q Okay. Do you have an understanding</p> <p>17 what a patent troll is?</p> <p>18 A Yes.</p> <p>19 Q Are you a patent troll?</p> <p>20 A No.</p> <p>21 Q You characterized John Fisher as a</p> <p>22 patent agent, which he is.</p>	<p>1 A No.</p> <p>2 Q Did you ever send Juniper a demand</p> <p>3 letter?</p> <p>4 A No.</p> <p>5 Q Did you ever send Apstra a demand</p> <p>6 letter?</p> <p>7 A No.</p> <p>8 Q Did you ever send Juniper a cease and</p> <p>9 desist letter?</p> <p>10 A No.</p> <p>11 Q Did you ever send Apstra a cease and</p> <p>12 desist letter?</p> <p>13 A No.</p> <p>14 Q Did you ever send a Draft Complaint to</p> <p>15 Juniper?</p> <p>16 A No.</p> <p>17 Q Did you ever send a Draft Complaint to</p> <p>18 Apstra?</p> <p>19 A No.</p> <p>20 Q In your testimony you stated that</p> <p>21 Swarm had sent Juniper and Phi Robotics draft</p> <p>22 patent license agreements; is that correct?</p>

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<p>1 A Correct.</p> <p>2 Q Where is Phi Robotics located?</p> <p>3 A Mumbai, India.</p> <p>4 Q Do they have a presence in Northern</p> <p>5 California?</p> <p>6 A They don't.</p> <p>7 Q Do they have a presence in the</p> <p>8 United States anywhere?</p> <p>9 A They don't.</p> <p>10 Q Other than Juniper and Mumbai --</p> <p>11 I'm sorry, Juniper and Phi Robotics, is there</p> <p>12 anyone else that received a draft patent license</p> <p>13 agreement from you, Mr. Fisher, Swarm, or your</p> <p>14 counsel?</p> <p>15 A No.</p> <p>16 Q Can we pull up Exhibit 16 for a</p> <p>17 moment, please. Can you blow it up?</p> <p>18 So earlier you testified that</p> <p>19 Mr. Fisher, on your behalf, on Swarm's behalf,</p> <p>20 sent claim charts to Mr. Saunders at Juniper,</p> <p>21 correct?</p> <p>22 A Correct.</p>	<p>1 Q And I believe you earlier testified</p> <p>2 that you weren't sure who drafted it, but that you</p> <p>3 thought maybe your patent attorney at the time,</p> <p>4 Michael Kelly -- that's me -- drafted it?</p> <p>5 A Correct.</p> <p>6 Q Okay. Have you had a chance to think</p> <p>7 about that since then?</p> <p>8 A Yes.</p> <p>9 Q And as you're looking at that document</p> <p>10 now when you're reading the language, who do you</p> <p>11 think drafted that document?</p> <p>12 A I believe it was Mr. Fisher who</p> <p>13 drafted the document.</p> <p>14 Q And is that because the language that</p> <p>15 you see there is more reflective of Mr. Fisher's</p> <p>16 style?</p> <p>17 A Correct.</p> <p>18 MR. SIGLER: Objection, leading.</p> <p>19 BY MR. KELLY:</p> <p>20 Q Exhibit 17, can we pull up the</p> <p>21 November 6, 2019, email from Fisher to Saunders?</p> <p>22 And specifically, I'm looking for the reference to</p>
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<p>1 Q Did you do that to provoke litigation</p> <p>2 with Juniper?</p> <p>3 A No.</p> <p>4 MR. SIGLER: Objection, form.</p> <p>5 BY MR. KELLY:</p> <p>6 Q Isn't it true that you made strategic</p> <p>7 decisions and affirmatively avoided provoking</p> <p>8 litigation with Juniper or anyone else?</p> <p>9 A Correct.</p> <p>10 MR. SIGLER: Objection to form.</p> <p>11 THE WITNESS: Correct.</p> <p>12 BY MR. KELLY:</p> <p>13 Q Okay. Exhibit 16, is there a page 5,</p> <p>14 Bates 282, we can scroll to? Yeah, that's it.</p> <p>15 You might blow it up a little bit so</p> <p>16 Mr. Íñiguez can refresh his recollection.</p> <p>17 Do you remember seeing that document</p> <p>18 earlier today in your deposition?</p> <p>19 A Yes, I have.</p> <p>20 Q I believe it was characterized as a</p> <p>21 Draft Patent License Agreement.</p> <p>22 A Correct.</p>	<p>1 the Markman hearing, so either scroll down or</p> <p>2 go -- I believe that's where the reference to the</p> <p>3 Markman hearing was.</p> <p>4 MS. JONES: Second paragraph.</p> <p>5 THE VIDEOGRAPHER: You need to direct</p> <p>6 me. I don't know where that's at.</p> <p>7 THE REPORTER: Billy, it's the last</p> <p>8 sentence of the second paragraph.</p> <p>9 MR. KELLY: Yeah, enlarge that entire</p> <p>10 second paragraph, please. Yes, thank you.</p> <p>11 BY MR. KELLY:</p> <p>12 Q So in paragraph 2 of this email from</p> <p>13 John Fisher to Dave Saunders, dated November 6,</p> <p>14 2019, 2:44 p.m., it says, "In past communications,</p> <p>15 Swarm has answered all of your questions</p> <p>16 concerning the '004 claim chart. Having answered</p> <p>17 all of your questions, it appears that you have</p> <p>18 failed to express any position that would prevail</p> <p>19 in a Markman hearing."</p> <p>20 Do you see that language?</p> <p>21 A Yes.</p> <p>22 Q And John Fisher sent that language</p>

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<p style="text-align: right;">Page 221</p> <p>1 with your authorization, correct?</p> <p>2 A Correct.</p> <p>3 Q Did you intend that to be a veiled</p> <p>4 threat of suit?</p> <p>5 A No.</p> <p>6 MR. SIGLER: Objection, leading.</p> <p>7 THE WITNESS: No. It has never been</p> <p>8 my intention to sue anyone.</p> <p>9 BY MR. KELLY:</p> <p>10 Q So the reference to the Markman</p> <p>11 hearing, you had earlier testified that you</p> <p>12 believe the Markman hearing generally relates to</p> <p>13 claim construction, how claim elements are</p> <p>14 properly construed.</p> <p>15 If your reference to the Markman</p> <p>16 hearing in this paragraph you said was not to</p> <p>17 threaten litigation, what was it for? Why the</p> <p>18 reference to Markman?</p> <p>19 A It is part of the process in claim</p> <p>20 construction.</p> <p>21 Q And did Swarm agree with Juniper's</p> <p>22 positions that they took in the email</p>	<p style="text-align: right;">Page 223</p> <p>1 charts before the suit was filed because they were</p> <p>2 included with the suit, and that's a public</p> <p>3 document.</p> <p>4 A That is correct.</p> <p>5 Q Okay, thank you.</p> <p>6 Can we pull up Exhibit 28, please?</p> <p>7 Next page.</p> <p>8 Do you recognize this as a Mutual</p> <p>9 Nondisclosure Agreement with RPX?</p> <p>10 A Yes.</p> <p>11 Q Did you ever enforce any sworn patents</p> <p>12 against RPX?</p> <p>13 A No, I did not.</p> <p>14 Q Did you ever threaten to?</p> <p>15 A No.</p> <p>16 Q Was RPX capable of infringing Swarm's</p> <p>17 patents at all?</p> <p>18 A No, because they don't make any</p> <p>19 products.</p> <p>20 Q Were they a potential licensee?</p> <p>21 A No.</p> <p>22 Q Okay. And if there had been a</p>
<p style="text-align: right;">Page 222</p> <p>1 correspondence with Mr. Fisher regarding the</p> <p>2 interpretation of the claims?</p> <p>3 A No.</p> <p>4 Q No. And is it for that reason that</p> <p>5 you said you didn't think they would prevail at a</p> <p>6 Markman hearing?</p> <p>7 A Correct.</p> <p>8 Q All right. Earlier Mr. Sigler asked</p> <p>9 you if Swarm had prepared claim charts prior to</p> <p>10 suing Amazon, prepared Amazon or AWF claim charts</p> <p>11 before suit.</p> <p>12 A Right.</p> <p>13 Q In your earlier answer, you were</p> <p>14 tentative about that. I just want to ask you to</p> <p>15 refresh your recollection and think about the</p> <p>16 actual Complaint and its exhibits, because you</p> <p>17 reviewed them before they were filed, correct?</p> <p>18 A Correct.</p> <p>19 Q And did they include detailed claim</p> <p>20 charts mapping the claims to Amazon's products?</p> <p>21 A Yes, they did.</p> <p>22 Q So of course you've prepared claim</p>	<p style="text-align: right;">Page 224</p> <p>1 governing law provision in an NDA that designated</p> <p>2 California either as governing law or venue, was</p> <p>3 it your understanding that that governing law</p> <p>4 would direct where the dispute -- where any</p> <p>5 dispute would be brought regarding the NDA, or</p> <p>6 regarding enforcing your patents?</p> <p>7 MR. SIGLER: Objection, form.</p> <p>8 THE WITNESS: Regarding the</p> <p>9 enforcement of my patents? Regarding the -- can</p> <p>10 you -- could you restate the question?</p> <p>11 BY MR. KELLY:</p> <p>12 Q The name of the document is</p> <p>13 Mutual NDA. To the extent that document includes</p> <p>14 a choice of law or venue provision, what's your</p> <p>15 understanding in terms of what that would mean for</p> <p>16 disputes arising out of this document?</p> <p>17 Would that relate to the venue for</p> <p>18 disputes arising out of this document, or out of</p> <p>19 documents unrelated to this document?</p> <p>20 MR. SIGLER: Objection, form.</p> <p>21 THE WITNESS: Well, given the fact</p> <p>22 that this is an NDA between Swarm and RPX, and</p>

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<p>1 Swarm -- I mean RPX cannot make -- does not make</p> <p>2 any products that can use Swarm Patents, any</p> <p>3 dispute that would happen have to be related to</p> <p>4 the NDA.</p> <p>5 BY MR. KELLY:</p> <p>6 Q And I think you earlier testified that</p> <p>7 RPX was not capable of infringing anyway, they're</p> <p>8 not in the semiconductor business.</p> <p>9 A Correct, they don't make any products.</p> <p>10 All they do is they buy patents, and then they use</p> <p>11 them to develop their business model.</p> <p>12 Q Okay. So RPX is neither a potential</p> <p>13 licensee nor a potential infringer?</p> <p>14 A Correct.</p> <p>15 Q All right. Could you put up</p> <p>16 Exhibit 34, please, page 15.</p> <p>17 BY MR. KELLY:</p> <p>18 Q Do you recall discussing this document</p> <p>19 earlier today with Mr. Sigler?</p> <p>20 A Yes, I have.</p> <p>21 Q Okay. And regarding the quotes</p> <p>22 attributed to Xerxes and Leonidas, were those</p>	<p>1 Q All right. Near the end of your</p> <p>2 deposition we talked about companies that may have</p> <p>3 received your business plan, executive summary, or</p> <p>4 the pitch deck, which we're calling for shorthand</p> <p>5 "the Triad."</p> <p>6 A Okay.</p> <p>7 Q So to your knowledge, did you search</p> <p>8 through your records and did you find all</p> <p>9 communications to anyone, whether inside or</p> <p>10 outside of California, to whom you had sent one or</p> <p>11 more of those Triad documents?</p> <p>12 A Yes, and that information has been</p> <p>13 provided as part of the documentation.</p> <p>14 Q And to the extent you uncovered any</p> <p>15 emails or letters or other correspondence with any</p> <p>16 company inside or outside of California that may</p> <p>17 have included one or more of the Triad, you</p> <p>18 included those comments -- or I'm sorry, you</p> <p>19 included those communications in yesterday's</p> <p>20 disclosure, didn't you?</p> <p>21 A Yes. Yes, all those companies are</p> <p>22 included in the answers to the interrogatories.</p>
Page 226	Page 228
<p>1 threats to sue?</p> <p>2 A No. Those are quotes from a book.</p> <p>3 They're meant to be used for motivational</p> <p>4 purposes.</p> <p>5 Q And this is part of a pitch deck,</p> <p>6 right?</p> <p>7 A Correct.</p> <p>8 Q From a start-up company?</p> <p>9 A Right.</p> <p>10 Q From a pre-revenue company?</p> <p>11 A Correct.</p> <p>12 Q So these are aspirational and were</p> <p>13 never intended to be as threats; is that correct?</p> <p>14 A That is correct.</p> <p>15 Q Do you think that any reasonable</p> <p>16 recipient of this document would interpret that as</p> <p>17 being threatened with a lawsuit?</p> <p>18 A No.</p> <p>19 Q And in fact, that language went</p> <p>20 primarily, if not exclusively, to investors, not</p> <p>21 to potential licensees?</p> <p>22 A That is correct.</p>	<p>1 Q Is Andreessen Horowitz one of those</p> <p>2 companies?</p> <p>3 A Yes.</p> <p>4 Q Is Bomming Star Venture Capital one of</p> <p>5 those companies?</p> <p>6 A Yes.</p> <p>7 Q Is Playground Global one of those</p> <p>8 companies?</p> <p>9 A Yes.</p> <p>10 Q Founding partner at Gradient Ventures?</p> <p>11 A Yes.</p> <p>12 Q Lux Capital?</p> <p>13 A Yes.</p> <p>14 Q A gentleman named Peter, private</p> <p>15 investor?</p> <p>16 A Yes.</p> <p>17 Q John Jeffries of Samsung Partner?</p> <p>18 A Yes.</p> <p>19 Q And Nexstar Partners?</p> <p>20 A Yes.</p> <p>21 Q Intel Capital?</p> <p>22 A Yes.</p>

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<p style="text-align: right;">Page 229</p> <p>1 Q Khosla Ventures?</p> <p>2 A Yes.</p> <p>3 Q A gentleman you referred to as Jabil?</p> <p>4 A Yes.</p> <p>5 Q Nvidia Business Development?</p> <p>6 A Yes.</p> <p>7 Q Samsung Research America?</p> <p>8 A Yes.</p> <p>9 Q Bonzon (ph) Capital?</p> <p>10 A Yes.</p> <p>11 Q Other than that list that we've just</p> <p>12 gone through, did anyone else receive one or more</p> <p>13 of the Triad documents from or on behalf of Swarm?</p> <p>14 A No.</p> <p>15 MR. KELLY: I have no further</p> <p>16 questions.</p> <p>17 MR. SIGLER: I have no follow-up</p> <p>18 questions. Thank you for your time today,</p> <p>19 Mr. Íñiguez.</p> <p>20 MR. KELLY: Thank you, Mr. Sigler.</p> <p>21 We'll read and sign.</p> <p>22 THE VIDEOGRAPHER: Okay, we are going</p>	<p style="text-align: right;">Page 231</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, DAWN A. JAQUES, a Notary Public in and for</p> <p>3 the Commonwealth of Virginia, before whom the</p> <p>4 foregoing deposition was taken, do hereby certify</p> <p>5 that witness whose testimony appears in the</p> <p>6 foregoing pages was duly sworn by me; that the</p> <p>7 testimony of said witness was taken by me in</p> <p>8 shorthand at the time and place mentioned in the</p> <p>9 caption hereof and thereafter reduced to typewriting</p> <p>10 under my supervision; that said deposition is a true</p> <p>11 record of the testimony given by said witness; that</p> <p>12 I am neither counsel for, related to, nor employed</p> <p>13 by any of the parties to the action in which this</p> <p>14 deposition is taken; and, further, that I am not a</p> <p>15 relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the actions.</p> <p>18</p> <p>19 <u>Dawn A. Jaques, CSR, CLR</u></p> <p>20 Notary Public in and for</p> <p>21 Commonwealth of Virginia</p> <p>22 My commission expires:</p> <p>August 31, 2023</p> <p>Registration No. 132328</p>
<p style="text-align: right;">Page 230</p> <p>1 off the record. This deposition is concluded at</p> <p>2 3:02 p.m.</p> <p>3 (Whereupon, at 3:02 p.m. Pacific Time,</p> <p>4 the taking of the deposition was</p> <p>5 concluded. Reading and signature</p> <p>6 were RESERVED.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 232</p> <p>1 Alfonso Íñiguez, c/o</p> <p>2 Beus Gilbert McGroder</p> <p>3 701 N. 44th Street</p> <p>4 Phoenix, Arizona 85008</p> <p>5 Case: Juniper Networks, Inc., et al., v. Swarm Technology LLC</p> <p>6 Date of deposition: May 14, 2021</p> <p>7 Deponent: Alfonso Íñiguez</p> <p>8</p> <p>9 Please be advised that the transcript in the above</p> <p>10 referenced matter is now complete and ready for signature.</p> <p>11 The deponent may come to this office to sign the transcript,</p> <p>12 a copy may be purchased for the witness to review and sign,</p> <p>13 or the deponent and/or counsel may waive the option of</p> <p>14 signing. Please advise us of the option selected.</p> <p>15 Please forward the errata sheet and the original signed</p> <p>16 signature page to counsel noticing the deposition, noting the</p> <p>17 applicable time period allowed for such by the governing</p> <p>18 Rules of Procedure. If you have any questions, please do</p> <p>19 not hesitate to call our office at (202)-232-0646.</p> <p>20</p> <p>21 Sincerely,</p> <p>22 Digital Evidence Group</p> <p>Copyright 2021 Digital Evidence Group</p> <p>Copying is forbidden, including electronically, absent</p> <p>express written consent.</p>

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 3
 4 SIGNATURE PAGE
 Case: Juniper Networks, Inc., et al., v. Swarm Technology LLC
 5 Witness Name: Alfonso Íñiguez
 Deposition Date: May 14, 2021
 6
 7 I do hereby acknowledge that I have read
 and examined the foregoing pages
 8 of the transcript of my deposition and that:
 9
 10 (Check appropriate box):
 () The same is a true, correct and
 11 complete transcription of the answers given by
 me to the questions therein recorded.
 12 () Except for the changes noted in the
 attached Errata Sheet, the same is a true,
 13 correct and complete transcription of the
 answers given by me to the questions therein
 14 recorded.
 15
 16 _____
 17 DATE WITNESS SIGNATURE
 18
 19
 20
 21 _____
 22 DATE NOTARY

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 6 ERRATA SHEET
 7
 8 Case: Juniper Networks, Inc., et al., v. Swarm Technology LLC
 9 Witness Name: Alfonso Íñiguez
 10 Deposition Date: May 14, 2021
 11 Page No. Line No. Change
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 22 Signature Date

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